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Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Report of the Secretary-General

Summary

The Economic and Social Council, by its resolution 1745 (LIV) of 16 May 1973, invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. The Council, by its resolution 1995/57 of 28 July 1995, recommended that the quinquennial reports of the Secretary-General should continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. By the same resolution, the Council requested the Secretary-General, in preparing the quinquennial report, to draw on all available data, including current criminological research. The present ninth quinquennial report reviews the use of and trends in capital punishment, including the implementation of the safeguards during the period 2009-2013.

In accordance with Economic and Social Council resolutions 1745 (LIV) and 1990/51 and Council decision 2005/247, the present report is submitted to the Council at its substantive session of 2015, and will also be before the Commission on Crime Prevention and Criminal Justice at its twenty-fourth session, and the Human Rights Council at its twenty-eighth session.

The report confirms the continuation of a very marked trend towards abolition and restriction of the use of capital punishment in most countries. Moreover, countries that retain the death penalty are, with rare exceptions, significantly reducing the numbers of persons executed and the crimes for which it may be imposed. Nevertheless, where capital punishment remains in force, there are serious

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problems with regard to international norms and standards, notably in the limitation of the death penalty to the most serious crimes, the exclusion of juvenile offenders from its scope and guarantees of a fair trial.

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I. Introduction

1. The present report, prepared pursuant to Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1989/64 and 1995/57 and Council decision 2005/247, is the ninth quinquennial report of the Secretary-General on capital punishment.[1] It covers the period 2009-2013 and reviews developments in the use of capital punishment. In accordance with those resolutions, the report also covers the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1984/50. By the same resolutions, the Council requested the Secretary-General, in preparing the quinquennial report, to draw on all available data, including current criminological research and comments from specialized agencies, intergovernmental organizations and non-governmental organizations in consultative status with the Council.

II. Background and scope

2. All States Members of the United Nations were invited to contribute information to the ninth quinquennial report of the Secretary-General on capital punishment by means of a detailed questionnaire (the "survey questionnaire"). In this report, States are classified by death penalty status as of 1 January 2009, making it possible to chart changes over the five-year period covered by this report up to the end of December 2013, and to make comparisons with the results of previous quinquennial reports, which used a similar method of analysis. The following categories are used:

(a) Abolitionist for all crimes, whether in time of peace or war;

(b) Abolitionist for ordinary crimes, meaning that the death penalty has been abolished for all ordinary offences committed in peacetime, such as those contained in the criminal code or those recognized in common law (for example, murder, rape and robbery with violence) and that the death penalty is retained only for exceptional circumstances, such as military offences in time of war, or crimes against the State, such as treason, terrorism or armed insurrection;

(c) Abolitionist de facto, namely States and territories in which the death penalty remains lawful and death sentences may still be pronounced but executions have not taken place for 10 years. States and territories that have carried out executions within the previous 10 years but have made an international commitment through the establishment of an official moratorium are also designated as de facto abolitionist;

(d) Retentionist in practice, namely States in which the death penalty remains lawful and that have conducted an execution during the previous 10 years.

3. This report deals with the period 2009-2013 covered by the survey but also notes some developments relevant to the law and practice of capital punishment that took place in 2014.

[1] For an overview, see E/CN.15/2001/10 and Corr.1, paras. 4-8, and E/2000/3, paras. 4-8. For the previous report, see E/2010/10 and Corr.1.

4. Information in the report is derived from replies to the ninth survey questionnaire, which was sent to Member States, intergovernmental organizations, specialized agencies of the United Nations and non-governmental organizations.[2] Survey questionnaires were returned by 54 States.[3] For the first time since the quinquennial reports were first prepared, it is now possible to obtain relevant information concerning almost all States Members of the United Nations. This is a consequence of the universal periodic review undertaken by the Human Rights Council. Member States usually present information about capital punishment in their reports to the Council. Where they do not, the issue is almost invariably raised by other States in the course of the review. In addition to such information, the periodic reports to United Nations treaty bodies and the documentation of the special procedures of the Human Rights Council were used as sources for the present report.

5. In order to develop a more comprehensive understanding of the situation, information on use of the death penalty was drawn from other sources. Several intergovernmental organizations, United Nations specialized agencies and elements of civil society submitted reports and information: the Office of the United Nations High Commissioner for Human Rights, the Council of Europe, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the International Criminal Tribunal for Rwanda, the Japan Federation of Bar Associations, Amnesty International and the College for Criminal Law Science of Beijing Normal University. Information was also drawn from publications of non-governmental organizations specialized in the area of capital punishment, notably Amnesty International, Hands Off Cain and Penal Reform International.

III. Changes in the status of the death penalty, 2009-2013

A. Countries and territories that had abolished the death penalty for all crimes by the beginning of 2009

6. At the beginning of 2009, 93 States had abolished the death penalty for all crimes, a considerably higher number than at the beginning of the previous quinquennium, in 2004, when there had been 79 completely abolitionist countries, and 1999, when there had been 70. No fully abolitionist State reintroduced the death penalty during the survey period. By the end of the quinquennium, in 2013, 101 countries were abolitionist for all crimes. During the reporting period, three de

[2] The survey instrument and the present report were prepared with the expert assistance of Professor William Schabas of Middlesex University, London.

[3] Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bulgaria, Burkina Faso, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, France, Germany, Greece, Guatemala, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Morocco, Netherlands, Oman, Paraguay, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Spain, State of Palestine, Thailand, Trinidad and Tobago, Turkmenistan and Uruguay. After the present report was submitted for processing, a response to the questionnaire was submitted by the Government of the United States of America. That response is contained in conference room paper E/CN.15/2015/CRP.3.

facto abolitionist States — Burundi, Gabon and Togo — abolished the death penalty for all crimes. One State that had been considered abolitionist for ordinary crimes, Latvia, became fully abolitionist. The Russian Federation moved from the category of de facto abolitionist to that of fully abolitionist given the confirmation in its report to the Human Rights Council and its reply to the questionnaire that since a 2010 decision of the Constitutional Court, the death penalty has been legally banned in the country.[4] Nauru has also been moved from the de facto abolitionist category to that of fully abolitionist following a clarification of the content of its laws by the Government in its report to the Human Rights Council.[5]

7. Many of these completely abolitionist countries reported involvement in initiatives at the international level to promote the abolition of capital punishment or to reduce its scope or the incidence of its application. Several mentioned support for the General Assembly resolutions calling for a moratorium on the death penalty, as well as initiatives within regional organizations such as the European Union and the Council of Europe. Many States are also involved at the bilateral level in promoting reduction and abolition of the death penalty. Some States mentioned their membership in the Group of Friends of the Second Optional Protocol to the International Covenant on Civil and Political Rights, an informal lobby group composed of States and non-governmental organizations that promotes the signature and ratification of and accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.[6]

8. Without exception, fully abolitionist States reported that there had been no initiatives whatsoever with a view to the reintroduction of capital punishment. Some abolitionist States reported initiatives aimed at preventing the reintroduction of capital punishment. In March 2010, the Australian Federal Parliament enacted the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 so as to ensure that the death penalty cannot be reintroduced anywhere in Australia.

9. Life imprisonment is the maximum penalty applicable to crimes previously sanctioned by capital punishment in most fully abolitionist States. In the majority of these States, early conditional release is possible after a minimum term of imprisonment has been served, ranging from 5 to 140 years imprisonment. However, this option is explicitly or implicitly excluded in several States that impose life imprisonment. In most cases, the minimum term of imprisonment is between 20 and 40 years. Only in a few States, sentencing for crimes once subject to the death penalty is within the discretion of the courts and no minimum is prescribed.

[4] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Russian Federation (A/HRC/WG.6/16/RUS/1), para. 31.

[5] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Nauru (A/HRC/WG.6/10/NRU/1), para. 19.

[6] United Nations, *Treaty Series*, vol. 1642, No. 14688.

B. Countries and territories that had abolished the death penalty for ordinary crimes by the beginning of 2009

10. During the quinquennium, one State that was abolitionist for ordinary crimes only, Latvia, became fully abolitionist. Since the first of the quinquennial reports, the category of States that are abolitionist for ordinary crimes only has declined in importance. For example, in 1974, more States were abolitionist for ordinary crimes only (16 States) than were abolitionist for all crimes (11 States). Over the years, the total number of such States fluctuated between 17 and 12 until the survey for the period 2004-2009, when it dropped to 8 States. At the end of 2013, there were seven such States. The number seems likely to continue to shrink for two reasons. Although in the past, the phenomenon of partial abolition of capital punishment through its exclusion in peacetime or for ordinary crimes was quite significant, today States move from retention to full abolition without any intermediate step. Kazakhstan would seem to be the sole exception in recent times, abolishing capital punishment in 2007 except for some terrorist and wartime offences, but accompanied by an official moratorium and a plan for full abolition.[7]

11. As a general rule, States that are abolitionist for ordinary crimes are also de facto abolitionist for all crimes. With the exception of Kazakhstan, which held its last execution in 2003, States that are abolitionist for ordinary crimes have not conducted any executions for several decades. Some are considering changes to their legislation in order to become fully abolitionist. Chile has said that it is "examining the restriction of the death penalty in the few circumstances in which the Code of Military Justice provides for it and which solely concern offences by military personnel in time of war".[8] Fiji told the Human Rights Council that although the death penalty appears in its Military Code, it has never been enforced and that "ongoing discussions between the Government and the Fiji Military Forces are taking place with the aim of removing the death penalty from the Military Code".[9] In its reply to the questionnaire, Israel indicated that there were no initiatives to move to full abolition. It referred to the only execution that had taken place since the State was created, that of Adolf Eichmann in 1962. Israel said that although it retains the death penalty, "there are no laws, regulations, guidelines or orders regulating the carrying out of a capital punishment".

C. De facto abolitionist countries at the beginning of 2009

12. A State that has not executed anyone for 10 years is deemed abolitionist de facto, regardless of whether the State acknowledges that there is a moratorium in place. At the beginning of the reporting period, in December 2009, 47 States were listed as de facto abolitionist. Five years later, that number had increased to 51. Ten States that had not executed anyone since 2003 moved from the retentionist

[7] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Kazakhstan (A/HRC/WG.6/7/KAZ/1), paras. 35-39; see the concluding observations of the Human Rights Committee (CCPR/C/KAZ/CO/1), para. 12.

[8] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Chile (A/HRC/WG.6/18/CHL/1), para. 99.

[9] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Fiji (A/HRC/WG.6/20/FJI/1), para. 70.

category to that of abolitionist de facto: Bahamas, Benin, Chad, Comoros, Cuba, Guinea, Mongolia, Oman, Qatar and Trinidad and Tobago. Five States that were in the de facto category in 2009 moved to the fully abolitionist category by the end of the quinquennium (see para. 6, above). The Gambia, where no executions had taken place since 1988, executed nine people in 2011. It was the only State already in the de facto abolitionist category that resumed executions during the quinquennium. The president of the Gambia subsequently announced that a renewed conditional moratorium on executions was in place.[10]

13. Over the 30 years since the quinquennial reports began recording States as de facto abolitionist if they had not conducted an execution for more than 10 years, 82 States have been so listed. Eleven of them resumed executions at some point,[11] although three of those States subsequently abolished capital punishment for all crimes[12] and six more have returned to the de facto category.[13] That is to say, of the 82 States classified as de facto abolitionist over the past three decades, only 3 States have revived the practice and also conducted an execution during the period 2004-2013.[14] In conclusion, the status of de facto abolitionist appears to be a very useful and accurate indicator of future behaviour and a valuable concept to assist in understanding trends with respect to capital punishment in both practice and law.

14. Some States in the de facto abolitionist category have indicated that they are taking steps towards the abolition of capital punishment in law. For example, Burkina Faso reported that a draft bill was prepared for ratification of the Second Optional Protocol. Burkina Faso said that it was preparing public opinion to accept such a development.[15] The Central African Republic reported that "a bill to simply abolish the death penalty had already been drafted; all that remained was to initiate the legislative process for its adoption by the Transitional National Council".[16] Benin has pointed to a process of adoption of relevant legislation as well as its accession to the Second Optional Protocol.[17] Comoros said that although capital punishment still exists in law, there have been no executions since the first cycle of the universal periodic review in 2009. It reported that draft legislation on the amendment of the Criminal Code removes the death penalty.[18] Congo said that as part of its "blueprint for society" based on the promotion of human rights, it will need to abolish the death penalty.[19] Ghana reported that its Government had

[10] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/69/265), para. 94.

[11] Bahrain, Barbados, Comoros, Gambia, Guatemala, Guinea, Guyana, Qatar, Rwanda, Philippines and Trinidad and Tobago.

[12] Burundi, Rwanda and Philippines.

[13] Comoros, Grenada, Guatemala, Guinea, Guyana and Trinidad and Tobago.

[14] Bahrain, Gambia and Qatar.

[15] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Burkina Faso (A/HRC/WG.6/16/BFA/1), para. 55.

[16] Report of the Working Group on the Universal Periodic Review: Central African Republic (A/HRC/25/11), para. 14.

[17] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Benin (A/HRC/WG.6/14/BEN/1), paras. 33 and 34.

[18] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Comoros (A/HRC/WG.6/18/COM/1), paras. 117 and 133.

[19] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Congo (A/HRC/WG.6/17/COG/1), paras. 158 and 174.

accepted the recommendation of the Commission on Human Rights and Administrative Justice that the death penalty be abolished. It noted that this would involve a constitutional referendum.[20] Madagascar informed the Human Rights Council that it had signed the Second Optional Protocol.[21] Niger said it was "developing strategies for approval" of the Second Optional Protocol.[22] The Republic of Korea said that the Government was considering removing the death penalty from the Criminal Code.[23] Suriname said that a draft amendment of the Penal Code to remove the death penalty had been presented to the Council of Ministers and would subsequently be presented for approval to Parliament.[24] In Tajikistan, a presidential order dated 9 April 2010 established a working group to consider the social and legal aspects of abolishing the death penalty.[25]

15. A large number of States that have not imposed the death penalty for more than 10 years acknowledge that they are applying a moratorium. Comoros,[26] the Democratic Republic of the Congo,[27] Dominica,[28] Grenada,[29] Guatemala,[30] Guinea,[31] Kenya,[32] the Lao People's Democratic Republic,[33] Maldives,[34] Mali,[35] Mongolia,[36] the Republic of Korea,[37] Sierra Leone,[38] Sri Lanka,[39] Tunisia[40] and the

[20] Report of the Working Group on the Universal Periodic Review: Ghana (A/HRC/22/6), para. 10.

[21] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Madagascar (A/HRC/WG.6/20/MDG/1), chap. V.

[22] Report of the Working Group on the Universal Periodic Review: Niger (A/HRC/17/15), para. 9.

[23] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Republic of Korea (A/HRC/WG.6/14/KOR/1 and Corr.1), para. 71.

[24] Report of the Working Group on the Universal Periodic Review: Suriname (A/HRC/18/12), para. 14.

[25] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Tajikistan (A/HRC/WG.6/12/TJK/1), para. 88.

[26] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Comoros (A/HRC/WG.6/18/COM/1), para. 116.

[27] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Democratic Republic of the Congo (A/HRC/WG.6/19/COD/1), para. 7.

[28] Report of the Working Group on the Universal Periodic Review: Dominica (A/HRC/27/9), para. 15.

[29] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Grenada (A/HRC/WG.6/8/GRD/1), para. 58.

[30] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Guatemala (A/HRC/WG.6/14/GTM/1), para. 74.

[31] Report of the Working Group on the Universal Periodic Review: Guinea (A/HRC/15/4), para. 11.

[32] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Kenya (A/HRC/WG.6/8/KEN/1), para. 37.

[33] Report of the Working Group on the Universal Periodic Review: Lao People's Democratic Republic (A/HRC/15/5), para. 11.

[34] Report of the Working Group on the Universal Periodic Review: Maldives (A/HRC/16/7), para. 27.

[35] Report of the Working Group on the Universal Periodic Review: Mali (A/HRC/23/6), para. 15.

[36] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Mongolia (A/HRC/WG.6/9/MNG/1), para. 20.

[37] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Republic of Korea (A/HRC/WG.6/14/KOR/1), para. 71.

[38] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Sierra Leone (A/HRC/WG.6/11/SLE/1), para. 95.

[39] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Sri Lanka (A/HRC/WG.6/2/LKA/1), para. 59.

United Republic of Tanzania[41] all recognized that a de facto moratorium was being observed. Algeria reported on the "continuation of the moratorium on the death penalty", explaining that on the international scene it belongs to the support group for the international commission on promotion of the moratorium and universal abolition of the death penalty and that it supports the General Assembly resolution on the moratorium.[42] Burkina Faso described itself as "an abolitionist country", noting that it has "signed the moratorium".[43] Cameroon said "the death penalty was not applied de facto and it would eventually be abolished but it was important to take into account changes in society".[44] Guyana noted that "no executions had taken place over the past decade, and any change in the status quo would have to be carried out with the involvement and acceptance of the people".[45] Swaziland said that "though a retentionist State in law, it is abolitionist in practice".[46] Tajikistan has a de jure moratorium in effect since 2004 when the Death Penalty (Suspension) Act entered into force.[47] Trinidad and Tobago said that implementation of the death penalty had been "in abeyance" since 1999.[48]

16. Some States suggest that a lack of executions over a 10-year period should not be construed to suggest a decision suspending capital punishment or the existence of a moratorium. Papua New Guinea said it would be "slightly erroneous to state that a moratorium existed, if such a statement was taken to imply that the death penalty had not been invoked", given that sentences of death had been imposed by the courts although in all cases these had been commuted to a life sentence through an appeal to the Supreme Court.[49] Saint Lucia said that although it had "exercised a de facto abolitionist position in the last 15 years, having not performed any executions, it is not presently in a position to move towards an express moratorium on the use of the death penalty, or its abolition".[50] Saint Vincent and the Grenadines said that it had voted against the General Assembly moratorium resolutions because this was inconsistent with its own domestic law. However, it pointed to the fact that persons on death row for over five years had their sentences commuted to life in prison:

[40] Report of the Working Group on the Universal Periodic Review: Tunisia (A/HRC/8/21), para. 6 (g).

[41] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: United Republic of Tanzania (A/HRC/WG.6/12/TZA/1), para. 17.

[42] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2: Algeria (A/HRC/WG.6/13/DZA/1), paras. 43 and 44.

[43] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2: Burkina Faso (A/HRC/WG.6/16/BFA/1), para. 55.

[44] Report of the Working Group on the Universal Periodic Review: Cameroon (A/HRC/24/15), para. 58.

[45] Report of the Working Group on the Universal Periodic Review: Guyana (A/HRC/15/14), para. 18; and A/HRC/15/14/Add.1, paras. 31-34.

[46] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Swaziland (A/HRC/WG.6/12/SWZ/1), para. 73.

[47] A/HRC/WG.6/12/TJK/1, para. 86.

[48] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Trinidad and Tobago (A/HRC/WG.6/12/TTO/1), para. 53; and report of the Working Group on the Universal Periodic Review: Trinidad and Tobago (A/HRC/19/7), para. 19.

[49] Report of the Working Group on the Universal Periodic Review: Papua New Guinea (A/HRC/18/18), para. 38.

[50] Report of the Working Group on the Universal Periodic Review: Saint Lucia (A/HRC/17/6), para. 38.

"Since it was not currently possible for a prisoner to exhaust his appeals in a five-year period, it was not possible in practice to impose the death penalty, which had not been exercised since 1995".[51] The Prime Minister of Jamaica announced, in July 2009, that the Government would implement the decision made by Parliament in 2008 to retain the death penalty by resuming executions as soon as the appeal avenues available to death row prisoners had been exhausted. However, there have been no executions in Jamaica subsequent to this declaration.

17. Twenty States in the de facto category registered their opposition to General Assembly resolution 67/176 entitled "Moratorium on the use of the death penalty" by including their names in a note verbale addressed to the Secretary-General of the United Nations.[52] Fifteen of the States in the de facto category had voted against the resolution,[53] and another 19 had abstained.[54] In other words, considerably less than half the number of States deemed abolitionist de facto endorsed the call for a moratorium. Even some States that appear to acknowledge that they have a moratorium in place did not support the resolution.[55]

18. In September 2005, Liberia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which prevents it from reinstating capital punishment. Some months after abolition, legislation was enacted imposing capital punishment for gang rape, although the penalty was subsequently changed to life imprisonment. Later, Liberia's Parliament introduced the death penalty for armed robbery, terrorism and hijacking. The legislation was approved by the President in July 2008.[56] In this report, Liberia is still deemed abolitionist de jure, because it is prohibited from imposing the death penalty by its international obligations, despite the inconsistency in its own national legislation. No executions have been carried out in Liberia since 2000.

D. Retentionist countries and territories that enforced capital punishment at the beginning of 2009

19. As of the beginning of 2009, 47 States were considered retentionist, in that the death penalty was lawful and they had actually conducted executions during the previous decade. During the period 2009-2013, this category declined to 39 States. During the survey period, two States were added to the list of retentionist States. The Gambia, which had not applied the death penalty since 1988, held 9 executions

[51] Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines (A/HRC/18/15), para. 35.

[52] See A/67/841; those States in the de facto category were Antigua and Barbuda, Barbados, Brunei Darussalam, Chad, Eritrea, Ghana, Grenada, Guyana, Jamaica, Lao People's Democratic Republic, Mauritania, Myanmar, Oman, Papua New Guinea, Qatar, Saint Lucia, Saint Vincent and the Grenadines, Swaziland, Tonga and Trinidad and Tobago.

[53] Bahamas, Barbados, Belize, Brunei Darussalam, Dominica, Grenada, Guyana, Jamaica, Myanmar, Oman, Saint Lucia, Saint Vincent and the Grenadines, Swaziland, Tonga and Trinidad and Tobago.

[54] Cameroon, Comoros, Cuba, Eritrea, Guinea, Kenya, Lao People's Democratic Republic, Lesotho, Malawi, Maldives, Mauretania, Morocco, Niger, Qatar, Republic of Korea, Sri Lanka, Suriname, United Republic of Tanzania and Zambia.

[55] Cameroon, Comoros, Dominica, Grenada, Guinea, Guyana, Lao People's Democratic Republic, Maldives, Republic of Korea, Sri Lanka and Zambia.

[56] Report of the Secretary-General on the question of the death penalty (A/HRC/12/45), para. 18.

in 2011 and thereby joined the category of retentionist States. South Sudan was created in 2012 and has since conducted executions.

20. Four retentionist States — Ethiopia,[57] Jordon,[58] Lebanon[59] and Zimbabwe[60] — indicated that they have moratoriums in place. Within some federal States, notably the United States of America and Nigeria, there are officially pronounced moratoriums in place in some of the states or units within the federal structure. Also, some States or units of federal States are themselves abolitionist in law. During the survey period, four states of the United States — New Mexico, Illinois, Connecticut and Maryland — abolished the death penalty. In its fourth periodic report to the United Nations Human Rights Committee, the United States said that "in a number of other states, although capital punishment remains on the books, it is rarely, if ever, imposed. Nine states that retain the death penalty, for example, have not conducted an execution in the last decade."[61]

21. Some retentionist States have also indicated that they are considering the abolition of the death penalty. Belarus has pointed to a very significant drop in the number of death sentences, from 47 in 1998 to 2 in 2008 and none in 2009, noting that "life imprisonment is being used with increasing frequency as an alternative to the death sentence in Belarus". Belarus said "the necessity of abolishing the death sentence is, however, being actively discussed at all levels in the country".[62] Equatorial Guinea reported that after conducting studies, the Government has concluded "for the time being ... that a moratorium is the most appropriate course of action". It told the Human Rights Council that legislation to this effect would be promulgated very shortly and that a decree granting "temporary amnesty with respect to the death penalty" had been adopted.[63] Lebanon reported that public discussions are under way about the abolition of capital punishment.[64] Somalia said that it is considering the imposition of a moratorium on capital punishment.[65] Following the universal periodic review, it said that "while the death penalty is currently imposed for the most serious crimes, the Government undertakes to work towards declaring a moratorium on the death penalty with a view to its eventual

[57] "Replies from the Government of Ethiopia to the list of issues (CCPR/C/ETH/Q/1) to be taken up in connection with the consideration of the second periodic report of Ethiopia (CCPR/C/ETH/1)" (CCPR/C/ETH/Q/1/Add.1), para. 28.

[58] Report of the Working Group on the Universal Periodic Review: Jordan (A/HRC/25/9), para. 88.

[59] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Lebanon (A/HRC/WG.6/9/LBN/1), paras. 30-33.

[60] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Zimbabwe (A/HRC/WG.6/12/ZWE/1), para. 47.

[61] CCPR/C/USA/4, para. 653.

[62] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Belarus (A/HRC/WG.6/8/BLR/1), paras. 90-94.

[63] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Equatorial Guinea (A/HRC/WG.6/19/GNQ/1), para. 48. Nevertheless, Equatorial Guinea was reported to have conducted executions in January 2014, a few weeks before it announced an official moratorium. Amnesty International reported that the moratorium was announced in order to secure membership in the Community of Portuguese-speaking Countries.

[64] A/HRC/WG.6/9/LBN/1, paras. 30-33.

[65] National report, Somalia, A/HRC/WG.6/11/SOM/1, para. 51.

abolition".[66] Zimbabwe reported that "there is constitutional debate on whether the death penalty should be retained or abolished".[67]

22. Others report that they make only very occasional use of capital punishment. India explained that the death penalty is actually enforced in only the "rarest of rare" cases.[68] Malaysia said that the death penalty was only imposed in a few cases, adding that "it seems fair to conclude that there exists to a certain extent a conscious initiative or trend against the implementation or execution of the death penalty".[69] Saint Kitts and Nevis indicated that the death penalty has only been carried out three times in the past 30 years.[70]

23. Some countries insist on the importance of retaining capital punishment. Iraq reported that it uses the death penalty only for "the most serious crimes, such as life-threatening assaults and certain serious terrorist crimes". It said abolition of the death penalty "would currently constitute a flaw in the criminal justice system, since Iraq is confronted with organized and unorganized heinous and abhorrent terrorist crimes, organized crime and violent acts perpetrated on racial, ethnic or religious grounds in an unstable security situation, the aim being to undermine the stability of democratic institutions. Under these circumstances, Iraq must retain the death penalty".[71] Japan said that immediate abolition of the death penalty was not possible given public support for the practice.[72]

24. During the quinquennium, some States introduced legislation that enlarged the scope of capital punishment. In 2010, the Gambia adopted legislation to make human trafficking, rape, violent robbery and some drug-related offences punishable by death.[73] In February 2011, China introduced the death penalty for forced organ removal from juveniles resulting in death.[74] Bangladesh adopted the Human Trafficking Prevention and Suppression Act (2012) authorizing the use of the death penalty as the most severe punishment for organized trafficking in human beings.[75] The Bangladesh Parliament amended the Anti-Terrorist Act (2009) in order to provide the death penalty as the maximum sentence.[76] Kenya adopted the Defence Forces Act 2012, which allows the imposition of the death penalty against members

[66] "The consideration by the Government of Somalia of the 155 recommendations", communication from the Permanent Mission of Somalia to the United Nations Office at Geneva, dated 21 September 2011, sect. 98.16.

[67] A/HRC/WG.6/12/ZWE/1, para. 47.

[68] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India (A/HRC/WG.6/13/IND/1), para. 28.

[69] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Malaysia (A/HRC/WG.6/17/MYS/1), para. 47.

[70] Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis (A/HRC/17/12), para. 11.

[71] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Iraq (A/HRC/WG.6/20/IRQ/1), sect. XI.10.

[72] Report of the Working Group on the Universal Periodic Review: Japan (A/HRC/22/14), para. 15.

[73] The Drug Control Amendment Act 2010, the Trafficking in Persons Amendment Act 2010 and the Criminal Code Amendment Act 2010.

[74] A/HRC/18/20, para. 21.

[75] Section 7, Act No. III of 2012.

[76] A/HRC/21/29, para. 17.

of defence forces for a range of offences.[77] India adopted the Criminal Law (Amendment) Act 2013, which authorizes the use of the death penalty for "repeat rape offenders" or for rape attacks that result in the victim's death.[78] Papua New Guinea adopted a law that provides for the reimplementation of the death penalty and extends its application to crimes of killings for sorcery, aggravated rape and robbery.[79] Nigeria amended its terrorist prevention law in order to extend capital punishment to a wide range of acts.[80] In the United States, Mississippi adopted legislation adding acts of terrorism to the list of crimes subject to capital punishment.[81]

25. There has been some concern about a resumption of executions by a number of States where use of the death penalty had appeared to have come to a halt. The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that 10 States where no executions had taken place for two years appeared to have resumed the practice.[82] In 2012, India conducted its first execution since 2004 and again executed another person in 2013. In the same year, Pakistan executed its first prisoner since 2007. In Indonesia, the first executions in five years were held in 2013. Kuwait and Nigeria also resumed executions after several years without any.

E. Trends during the quinquennium 2009-2013

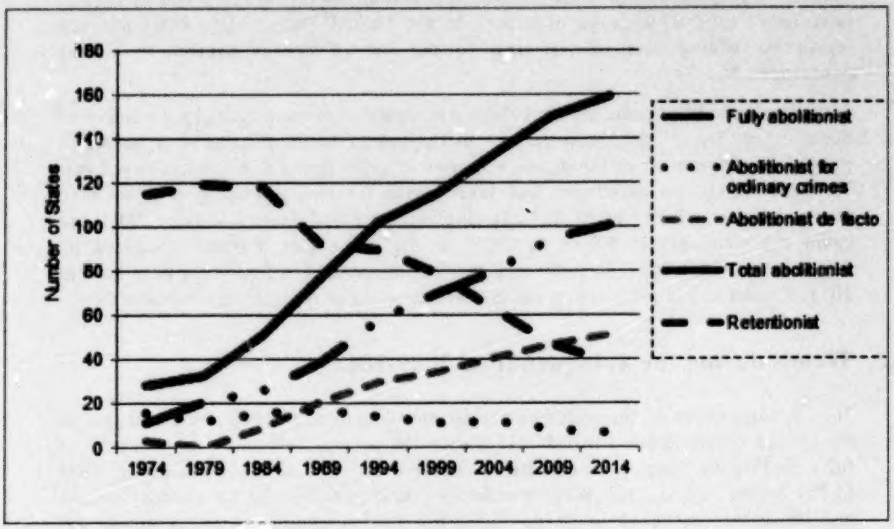
26. A comparison of the status of capital punishment at the beginning and end of the quinquennium appears in Table 1. During the period 2009-2013, the category of fully abolitionist States increased by six States,[83] from 95 at the beginning of 2009 to 101 by the end of 2013. When the States that are abolitionist for ordinary crimes and those that are abolitionist de facto, not having conducted an execution for 10 years or more, are added, 159 States can be considered abolitionist. The category of retentionist States totals 39, a decline from 47 when the previous quinquennial report was issued. This takes into account the new State of South Sudan, where capital punishment is practised. Four States in the retentionist category explain that they have a de facto moratorium on capital punishment. A number of others indicate that they are considering the question of abolition. Almost all of the retentionist States report reductions in the number of executions and the number of crimes subject to the death penalty, and a variety of other reforms aimed at limiting the practice.

27. The change in the number of retentionist States, from 47 to 39, constitutes a decline of 17 per cent. This pace of abolition is measurably slower when compared with the previous quinquennial report. The report for the period 2004-2009 noted that 15 States out of a total of 62, or 24.2 per cent, had abolished the death penalty de jure or de facto during the reporting period. For the period 1999-2003, 16 out of 79 States became abolitionist, or 20.2 per cent. For the period 1994-1998, 16 out of 94 States, or 17.0 per cent, abolished the death penalty. When the statistics are

[77] Kenya Defence Forces Act No. 25 of 2012, sects. 58-64, 72-73 and 133.
[78] India, Ministry of Law and Justice, The Criminal Law (Amendment) Act No. 13 of 2013.
[79] A/HRC/24/18, para. 13.
[80] Nigeria, Terrorism (Prevention) (Amendment) Act 2013; see also A/HRC/21/29, para. 17.
[81] United States, Mississippi Legislature, Senate Bill No. 2223 (2013).
[82] A/69/265, para. 93.
[83] Burundi, Gabon, Latvia, Nauru, Russian Federation and Togo.

considered by decade rather than quinquennium, the rate of abolition for 1994-2003 is 34 per cent while for 2004-2013, it is 37 per cent (see the figure showing trends in status of capital punishment from 1974 to 2014).

Figure
Trends in status of capital punishment



28. The trends towards abolition in the ninth quinquennial survey have continued although the pace has slowed slightly by comparison with the previous quinquennium. The number of de facto abolitionist countries increased significantly. Even among retentionist countries, only 32 carried out any judicial executions during the five-year period. Very likely, some of them will join the de facto or de jure abolitionist category during the next five-year period. Importance should also be attached to the decline in the numbers of persons executed in many States. An up-to-date list of abolitionist and retentionist countries, organized according to the four categories is contained in the annex to the present report.

Table 1
Status of the death penalty at the beginning and end of the five-year survey period, 2009-2013

	Abolitionist	*Abolitionist for ordinary crimes*	*Abolitionist de facto*	*Total abolitionist*	*Retentionist*
1 January 2009 (197 States and territories)	95	8	46	149	47
31 December 2013 (198 States and territories)	101	7	51	159	39

IV. Enforcement of the death penalty

29. During the period 2009-2013, 30 States Members of the United Nations,[84] as well as the Taiwan Province of China and the State of Palestine[85] conducted executions. This was a drop of five in number compared with the previous five-year period. Of those that conducted executions, 19 States or territories conducted fewer than 20 executions each.[86] Table 2 shows the number of executions by country for each of the five years of the quinquennium. Some of those data are based upon non-official sources, principally the reports of Amnesty International and Hands Off Cain, given that many retentionist States do not provide official data or respond to the questionnaire.

Table 2
Executions by country or area, 2009-2013

Country or territory	*2009*	*2010*	*2011*	*2012*	*2013*	*Total*
Afghanistan	0	0	2	14	2	18
Bangladesh	3+	9+	5	1	2	20+
Belarus	0	2	2	3	0	7
Botswana	1	1	0	2	1	5
China[a]	..	..	..	..	..	..
Democratic People's Republic of Korea[b]	32+	60+	30+	13+	40+	175+
Egypt	5+	4	1+	0	0	10+
Equatorial Guinea	0	4	0	0	0	4
Gambia	0	0	9	0	0	9
India	0	0	0	1	1	2
Indonesia	0	0	0	0	5	5
Iran (Islamic Republic of)[b]	388+	399+	518+	460+	540+	2 305+
Iraq[b]	120+	1+	68+	129+	170+	488+
Japan	7	2	0	7	8	24
Kuwait	0	0	0	0	5	5
Libya	4+	18+	0	0	0	22+
Malaysia	1+	5+	0	0	3	9
Nigeria	0	0	0	0	4	4
Pakistan	0	0	0	1	0	1

[84] Afghanistan, Bahrain, Bangladesh, Belarus, Botswana, China, Democratic People's Republic of Korea, Egypt, Equatorial Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kuwait, Libya, Malaysia, Nigeria, Pakistan, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syrian Arab Republic, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.

[85] A reply to the questionnaire received from the Office of the Attorney General of the State of Palestine reported that the death penalty had been "suspended" since the establishment of the Palestinian National Authority, which occurred in 1994. According to the Palestinian Centre for Human Rights, executions have occurred in the Gaza Strip since 2007. See "Gaza Court of first instance issues new death sentence", 18 May 2014. Available at www.pchrgaza.org.

[86] Afghanistan, Bangladesh, Belarus, Botswana, Egypt, Equatorial Guinea, Gambia, India, Indonesia, Kuwait, Malaysia, Nigeria, Pakistan, Singapore, South Sudan, State of Palestine, Taiwan Province of China, Thailand and United Arab Emirates.

Country or territory	2009	2010	2011	2012	2013	Total
Saudi Arabia[b]	69+	27+	82+	81+	78+	347+
Singapore	1	0	0	0	0	1
Somalia	0	8+	10	7+	30+	55+
South Sudan	-	-	5	5+	4+	14+
State of Palestine	0	5	3	6	3	17
Sudan[b]	9+	7+	7+	19+	21+	63+
Syrian Arab Republic[b]	8	17+	0	6	0	31+
Taiwan Province of China	0	4	5	3	6	18
Thailand	2	0	0	0	0	2
United Arab Emirates	0	0	1	1	0	2
United States of America	52	46	43	43	39	223
Viet Nam[b]	9+	0	11+	0	7+	27+
Yemen[b]	30+	53+	41+	28+	13+	165+

Note: Two dots (..) indicate that data are not available.

A hyphen (-) indicates that the item is not applicable.

[a] No official statistics were available from China. Estimating an average of the information provided by Amnesty International and Hands Off Cain was not possible because Amnesty International ceased providing estimates in 2009. Despite its recent amendments to criminal laws and procedures, aimed at restricting the application of the death penalty, China has reportedly continued to execute thousands of individuals annually (see A/HRC/27/23, para. 27).

[b] The data are based upon an average of the information provided by Amnesty International and Hands Off Cain.

30. States have repeatedly been requested to make available to the public "information with regard to the imposition of the death penalty and to any scheduled execution".[87] Nevertheless, up-to-date and accurate global figures on the application of the death penalty are difficult to obtain.[88] There is a continued lack of data in some countries concerning the number and characteristic of individuals executed. This is compounded in countries that have been affected by conflicts, where it may not be possible to obtain sufficient information to confirm the number of alleged executions. Furthermore, in some States the data on the use of the death penalty continues to be classified as a State secret. Disclosure of such information is considered a criminal offence.[89] In 2012, the General Assembly called upon States "to make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty".[90]

31. The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that in a "considerable number of countries information concerning the death

[87] Commission on Human Rights resolution 2005/59 entitled "The question of the death penalty" (see, *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A), para. 7 (i).

[88] See A/63/293 and Corr.1, para. 7.

[89] A/HRC/24/18, para. 16.

[90] General Assembly resolution 67/176, para. 4 (b).

penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families."[91] According to the Special Rapporteur, "countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty".[92] The United Nations treaty bodies such as the Human Rights Committee[93] and the Committee against Torture[94] have also insisted upon access to relevant information on death penalty cases.

32. Previous quinquennial reports have noted that raw numbers alone may be misleading, because they do not take into account differences in total population. For this reason, the reports for the periods 1994-1998, 1999-2003, 2004-2008 contained tables listing both the total number of executions by country and the rate per million of the population for countries and territories where 20 or more persons had been executed during the period concerned.[95] Those data have also been compiled for the period 2009-2013 and appear, with the statistics for the previous three periods, in table 3.[96]

Table 3

Countries and territories that remained retentionist at the end of 2008 and in which there were reports of at least 20 persons having been executed in any of the five-year periods, with the estimated annual average (mean) rate per 1 million population

Country or territory	*Executions 1994-1998*	*Rate per million*	*Executions 1999-2003*	*Rate per million*	*Executions 2004-2008*	*Rate per million*	*Executions 2009-2013*	*Rate per million*
Afghanistan	34	0.36	78	0.56	33+	0.16	18	0.14
Bangladesh	-	-	-	-	29	0.04	20+	0.02
Belarus	168	3.20	37-52	0.74-1.04	14+	0.29	7+	0.15
China	12 338	2.01	6.687	1.04	8 188	1.22	..	..
Democratic People's Republic of Korea	-	-	-	-	194+	1.62	175+	1.4
Democratic Republic of the Congo	100	0.43	350	1.30	0	0	0	0
Egypt	132	0.43	350	1.30	9	0.02	10+	0.02
Iran (Islamic Republic of)	505	1.59	604+	1.83	1 187	3.29	2 305+	5.92
Iraq	-	-	-	-	135	0.92	488	2.71
Japan	24	0.04	13	0.02	31	0.05	24	0.04
Jordan	55	2.12	52+	2.08	19+	0.62	0	0

[91] E/CN.4/2005/7, para. 57; see also A/HRC/7/3/Add.7, para. 49, and A/HRC/8/3/Add.3, paras. 79-82.

[92] E/CN.4/2005/7, para. 57; see also E/CN.4/2006/53/Add.3.

[93] *Toktakunov v. Kyrgyzstan* (see CCPR/C/101/D/1470/2006, annex, para. 6.3).

[94] CAT/C/CHN/CO/4, para. 34.

[95] E/2000/3 and Corr.1, tables 1 and 2; E/2005/3 and Corr. 1, chap. IV, table 2.

[96] The data for the period 2009-2013 include four States with numbers of executions that exceed 20 and that were not on the 1994-1998 list: Bangladesh, Democratic People's Republic of Korea, Iraq and Syrian Arab Republic.

Country or territory	*Executions 1994-1998*	*Rate per million*	*Executions 1999-2003*	*Rate per million*	*Executions 2004-2008*	*Rate per million*	*Executions 2009-2013*	*Rate per million*
Kazakhstan	148	1.74	0	0	0	0	0	0
Kuwait	-	-	-	-	28	1.93	5	0.31
Kyrgyzstan	70	2.80	0	0	0	0	0	0
Libya	31	1.17	-	-	23	0.73	22+	0.70
Nigeria	248	0.41	4	0.006	0	0	4	0.004
Pakistan	34	0.05	48+	0.07	323	0.39	1	0.001
Republic of Korea	57	0.25	-	-	0	0	0	0
Russian Federation	161	0.2	0	0	0	0	0	0
Rwanda	23	0.58	0	0	0	0	0	0
Saudi Arabia	465	4.65	403+	3.66	423	3.34	347+	2.26
Sierra Leone	71	2.84	0	0	0	0	0	0
Singapore	242	13.83	138	6.9	22	1.26	1	0.03
Somalia	..	..	..	..	..	..	55+	1.02
Sudan	5	0.03	53+	1.17	83	0.42	63+	0.34
Syrian Arab Republic	..	..	..	..	12+	0.12	31+	0.27
Taiwan Province of China	121	1.13	67	0.59	6	0.05	18	0.15
Thailand	4	0.04	33	0.29	0	0	2	0.01
Turkmenistan	373	14.92	0	0	0	0	0	0
Uganda	4	0.04	33	0.29	17	0.10	0	0
Ukraine	389	1.55	0	0	0	0	0	0
United States of America	274	0.20	385	0.27	251	0.16	223	0.14
Viet Nam	145	0.38	128+	0.32	167	0.38	27+	0.06
Yemen	88	1.10	144+	1.51	71	0.61	165+	1.27
Zimbabwe	22	0.37	3	0.05	0	0	0	0

Note: Two dots (..) indicate that data are not available.
A hyphen (-) indicates that the item is not applicable.

33. The analysis of States with high rates of execution confirms the very marked trend towards both reduction and abolition of the death penalty. Of the 26 countries in the 1994-1998 study listed as having executed 20 or more persons during the reporting period, only 9 remain on the list for the 2009-2013 period. Of the 18 countries and territories recording 20 or more executions for the 1994-1998 period that still conduct executions, the rate of execution per million in the population for the 2009-2014 period has declined for 16 of them. Table 4 shows the leading practitioners of capital punishment, based upon the rate of execution per million over the quinquennium.

Table 4
Countries in order of estimated annual average (mean) rate per 1 million population, with 20 or more total executions in the period 2009-2013

Country	*Rate*
Iran (Islamic Republic of)	5.92
Iraq	2.71
Saudi Arabia	2.26
Democratic People's Republic of Korea	1.4
Yemen	1.27
Somalia	1.02
Libya	0.70
Sudan	0.34
Syrian Arab Republic	0.27
United States of America	0.14
Viet Nam	0.04
Japan	0.04
Bangladesh	0.02
China[a]	

[a] No official statistics were available from China. However, China has reportedly continued to execute thousands of individuals annually (see A/HRC/27/23, para. 27). Thus, it continues to be considered to be among those States with 20 or more total executions in the period 2009-2013. In the period 2004-2008, the rate was 1.22 per 1 million population (E/2010/10 and Corr.1).

34. There is very significant regional diversity in the use of capital punishment. In Europe, only Belarus continues to carry out executions. The rate of execution in Belarus dropped from 3.20 per million in the period 1994-1998 to 0.29 per million in 2004-2008 and to 0.15 per million in 2009-2013. In the Western hemisphere, only the United States conducted executions during the quinquennium. The official statistics published by the United States indicate a measurable decline in the rate of executions, from 0.20 per million in the period 1994-1998 and 0.27 per million in 1999-2003 to 0.16 per million in 2004-2008 and 0.14 per million in 2009-2013. Law and practice concerning the death penalty has changed greatly in Africa. Of countries worldwide executing 20 or more persons during the period 2009-2013, only 2 countries, Libya and the Sudan, were countries in Africa, compared with 7 African countries in the 1994-1998 study. For the year 2013, there were 9 executions in all of Africa if Somalia and the Sudan are excluded.

V. International developments

A. General Assembly

35. Important developments during the quinquennium concerning capital punishment took place within intergovernmental organizations, international courts and human rights monitoring bodies. Probably the most significant development

during the reporting period was the adoption, in 2010[97] and in 2012,[98] of General Assembly resolutions calling for a moratorium on capital punishment. The first such resolution had been adopted by the General Assembly in 2007, with 104 votes in favour to 54 against, and 29 abstentions,[99] followed by a second resolution in 2008.[100] A fifth moratorium resolution, adopted in December 2014, obtained 117 votes in favour to 37 against, with 34 abstentions.[101]

36. Following the adoption by the General Assembly of its first resolution concerning a moratorium on the use of the death penalty (Assembly resolution 62/149), in a note verbale dated 2 February 2008, representatives of 58 permanent missions to the United Nations wrote to the Secretary-General "to place on record that they are in persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition". A similar note verbale was sent after the adoption of the subsequent moratorium resolutions by the General Assembly.[102] Under the resolutions, the Secretary-General is requested by the General Assembly to report to it on their implementation. Pursuant to that request, the Office of the United Nations High Commissioner for Human Rights, on behalf of the Secretary-General, sought information from Member States and compiled a report to reflect their submissions.[103]

B. Human Rights Council

37. The Secretary-General has been submitting annual reports on the death penalty to the Human Rights Council since 2007.[104] In 2011, the Human Rights Council requested that the Secretary-General continue providing "a yearly supplement to the quinquennial report ... paying special attention to the imposition of the death penalty for crimes committed by persons below 18 years of age, on pregnant women and on persons with mental or intellectual disabilities".[105] Accordingly, the Secretary-General has continued to submit his annual reports.[106]

38. In 2013, the Human Rights Council adopted a resolution on the impact of a parent's death sentence and execution on his or her children.[107] On 5 March 2014, the Human Rights Council held a high-level panel discussion on the question of the death penalty in accordance with a decision taken the previous year.[108] In 2014, at

[97] The third moratorium resolution, General Assembly resolution 65/206, was adopted in 2010, with 109 States in favour, 41 against and 35 abstentions.

[98] The fourth moratorium resolution, General Assembly resolution 67/176, was adopted in 2012, votes in favour totalled 111 with 41 against and 34 abstentions.

[99] Assembly resolution 62/149.

[100] Assembly resolution 63/168. Adopted with 106 States in favour to 46 against, and 34 abstentions.

[101] Assembly resolution 69/186.

[102] In 2009 and 2011, the note verbale relating to that year's General Assembly resolution on the moratorium on the use of the death penalty obtained 53 signatures, and the corresponding note verbale of 2013 obtained 47 signatures. See A/63/716, A/65/779 and A/67/841.

[103] A/63/293 and Corr.1.

[104] A/HRC/4/78, A/HRC/8/11, A/HRC/12/45 and A/HRC/15/19.

[105] Human Rights Council decision 18/117.

[106] A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18.

[107] Human Rights Council resolution 22/11.

[108] Human Rights Council decision 22/117.

its twenty-sixth session, the Human Rights Council adopted resolution 26/2, entitled "The question of the death penalty". The recorded vote indicated 29 votes in favour to 10 against, with 8 abstentions.[109] The final resolution on the subject adopted by the Commission of Human Rights, in 2005, had obtained 26 votes in favour out of 53, or 49 per cent of the membership, whereas the result in the Council, with 29 votes out of 47, represents 61 per cent of the membership. In 2005, the 17 States voting against the resolution accounted for 32 per cent of the membership, whereas the 10 voting against the resolution in 2014 constituted 21 per cent of the membership of the Human Rights Council. The percentage of abstentions remained about the same for the two votes. Human Rights Council resolution 26/2 took note of the reports of the Secretary-General, of which the most recent "highlighted the significant developments towards the universal abolition of the death penalty and some noticeable steps towards restricting its use in countries that have retained it". The resolution welcomed "the fact that many States are applying a moratorium on the use of the death penalty". The Council decided to convene biennial high-level panel discussions in order to further exchange views on the question of the death penalty.

C. Human rights treaty bodies

39. The Human Rights Committee has addressed the administration of capital punishment in its examination of periodic reports from States parties as well as in its consideration of communications from individual victims submitted to it pursuant to the first Optional Protocol to the International Covenant on Civil and Political Rights. During the reporting period, the Committee issued views on several important issues associated with capital punishment, including the prohibition of a mandatory death penalty,[110] the requirement that procedural fairness be scrupulously observed,[111] risk of capital punishment in the event of extradition, expulsion or deportation[112] and conditions on death row.[113] On two occasions, it also issued press releases expressing grave concern at the imposition of death sentences in Belarus despite the issuance of a request that execution be stayed pending consideration of the case by the Human Rights Committee. The Committee

[109] Human Rights Council resolution 26/2. The voting was as follows: *in favour*: Algeria, Argentina, Austria, Benin, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Estonia, France, Gabon, Germany, Ireland, Italy, Kazakhstan, Mexico, Montenegro, Namibia, Peru, Philippines, Romania, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of); *against*: Botswana, China, Ethiopia, India, Indonesia, Japan, Kuwait, Pakistan, Saudi Arabia, United Arab Emirates; *abstaining*: Cuba, Kenya, Maldives, Morocco, Republic of Korea, Russian Federation, United States of America, Viet Nam.

[110] *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005, para. 7.2); *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006, para. 6.7); *William Kamoyo v. Zambia* (CCPR/C/104/D/1859/2009, para. 6.4); and *Johnson v. Ghana* (CCPR/C/110/D/2177/2012).

[111] CCPR/C/98/D/1520/2006, para. 6.7; *Otabek Akhadov v. Kyrgyzstan* (CCPR/C/101/D/1503/2006, para. 7.5); *Andrei Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004, para. 9.1); *Lyubov Kovaleva and Tatyana Kozyar v. Belarus* (CCPR/C/106/D/2120/2011, para. 11.8); CCPR/C/104/D/1859/2009, para. 6.4; and *Svetlana Zhuk v. Belarus* (CCPR/C/109/D/1910/2009, para. 8.7).

[112] *X. v. Sweden* (CCPR/C/103/D/1833/2008, para. 9.4).

[113] CCPR/C/104/D/1859/2009, para. 6.5; CCPR/C/98/D/1520/2006, para. 6.8.

described such actions as "flagrant violations of the human rights treaty obligations of Belarus".[114] The Human Rights Committee also addressed issues relating to the death penalty in its consideration of periodic reports. Those materials are considered in section VI below, under the headings of the relevant safeguards.

40. The Committee against Torture welcomed abolition of the death penalty by the Philippines when it considered the State's second periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[115] In its consideration of the periodic report of Yemen, the Committee registered concerns about reports that the death penalty had been imposed on children between the ages of 15 and 18, as well as a lack of information about the number of persons executed, the applicable crimes and other relevant information.[116] The Committee also asked Ethiopia to provide it with detailed information on the number of prisoners on death row, disaggregated by sex, age, ethnicity and offence.[117] The Committee noted with satisfaction the elimination of capital punishment by El Salvador but recommended that it should also be abolished for certain military offences stipulated in military legislation during a state of international war.[118] The Committee has also dealt with capital punishment in its treatment of communications, generally when expulsion, extradition or deportation to a country where there is a real risk of the death penalty is at stake.[119]

41. The Committee on the Rights of the Child has questioned States about the possibility that persons may be subject to capital punishment with respect to acts that took place when they were children. For example, it expressed serious concerns that, despite the adoption of the Child Act (2010) in the Sudan, which prohibits the passing of the death sentence on children, under article 36 of the interim Constitution of the Sudan the death penalty might be imposed on persons below the age of 18 in cases of *quisas* (retribution) or *hudud* crimes.[120] With respect to Yemen, the Committee referred to cases of children sentenced to death and executed, including a girl who was 15 years at the time of the crime and who was executed in 2012. The Committee referred to 33 children who had been sentenced to death, three cases of which were approved by the former president.[121] The Committee on Economic, Social and Cultural Rights expressed concern over the Islamic Republic of Iran's criminalization of consensual same-sex sexual activity, where convicted persons could be subject to the death penalty. The Committee recommended that the State party repeal or amend all legislation that could result in the discrimination, prosecution or punishment of people on the basis of their sexual orientation or gender identity.[122]

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[114] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 40* (A/66/40), chap. II, sect. A, paras. 50 and 51; *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 40* (A/67/40), chap. II, sect. A, paras. 55-57.

[115] CAT/C/PHL/CO/2, para. 5.

[116] CAT/C/YEM/CO/2/Rev.1, para. 21.

[117] CAT/C/ETH/CO/1, para. 24.

[118] CAT/C/SLV/CO/2, para. 5.

[119] *Abolghasem Faragollah et al. v. Switzerland* (CAT/C/47/D/381/2009, para. 9.4); *K. N., F. W. and S. N. v. Switzerland* (CAT/C/52/D/481/2011, para. 7.6).

[120] CRC/C/SDN/CO/3-4, para. 35.

[121] CRC/C/YEM/CO/4, para. 33.

[122] E/C.12/IRN/CO/2, para. 7.

D. United Nations human rights special procedures

42. United Nations human rights special procedures have also addressed issues related to the death penalty in the context of their mandates. The Special Rapporteur on extrajudicial, summary or arbitrary executions is mandated by the Human Rights Council "to continue to monitor the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto".[123] On 25 and 26 June 2012, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment organized an expert consultation on the subject of the death penalty at Harvard Law School in the United States. Both special rapporteurs subsequently issued reports. The Special Rapporteur on extrajudicial, summary or arbitrary executions concluded that in countries that have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases.[124] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded "that there is an evolving standard whereby States and judiciaries consider the death penalty to be a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment ... The Special Rapporteur is convinced that a customary norm prohibiting the death penalty under all circumstances, if it has not already emerged, is at least in the process of formation."[125]

E. Regional organizations

43. The Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary Executions in Africa, established by the African Commission on Human and Peoples' Rights, reported in November 2010 that it had examined a draft resolution on the abolition of the death penalty. The Working Group considered that it was important that the African Commission envisage the adoption of such a resolution to move towards the abolition of the death penalty. It also prepared a document on the question of the death penalty in Africa and said it envisaged the drafting of a protocol to the African Charter on Human and Peoples' Rights on the abolition of the death penalty in Africa.[126] The Working Group also sent letters of appeal to the relevant authorities on the situation of the death penalty in the Gambia, Nigeria and the Sudan. The Commissioner of the African Commission reminded States parties to the African Charter that capital punishment was cruel and therefore morally unjustifiable, unnecessary, irreversible and illogical and represented a most grave

[123] Human Rights Council resolution 17/5, para. 7 (e).

[124] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/67/275, para. 67), citing Hood and Hoyle, *The Death Penalty*, 4th ed. (Oxford, Oxford University Press, 2008), p. 132.

[125] A/67/279, para. 72.

[126] Progress report of the African Commission on Human and Peoples' Rights Working Group on the Death Penalty in Africa, November 2010.

violation of fundamental human rights, in particular the right to life under article 4 of the African Charter.[127]

44. The Parliamentary Assembly of the Council of Europe urged Japan and the United States, as observer States, to join the growing consensus among democratic countries that protect human rights and human dignity by abolishing the death penalty.[128] Council of Europe bodies have focused attention on Belarus, the only European State that continues to employ capital punishment.[129]

45. Although the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, explicitly acknowledges the death penalty as an exception to the right to life, in 2010, the European Court of Human Rights held that consistent practice of Member States was "strongly indicative" that the Convention has been amended so as to prohibit the death penalty in all circumstances.[130] In July 2014, the Grand Chamber of the European Court of Human Rights held that "the fact that imposition and use of the death penalty negates fundamental human rights has been recognized by the member States of the Council of Europe".[131]

46. The death penalty has been abolished in all 28 States members of the European Union. A second revised and updated version of the guidelines to European Union policy towards third countries on the death penalty was approved by the Foreign Affairs Council of the Council of the European Union on 22 April 2013. The 2013 version of those guidelines makes a number of key clarifications to the minimum standards that are to be applied by States that continue to use the death penalty, including narrowing the concept of "most serious crimes" for which capital punishment may still be permitted under international law. According to the revised and updated Guidelines, the death penalty may not be imposed for "non-violent acts" in a general sense, and, specifically, for economic, political and drug-related crimes.[132]

47. The Parliamentary Assembly of the Council of Europe has regularly adopted resolutions dealing with capital punishment.[133] In terms of technical assistance, the guidelines declare that "actions, such as legal, financial or other technical assistance to third countries, should not contribute to the use of the death penalty".

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[127] Combined activity report of the Commissioner of the African Commission on Human and People's Rights and the Chairperson of the Working Group on the Death Penalty in Africa, 49th ordinary session held in Banjul from 28 April to 12 May 2011.

[128] Council of Europe resolution 1807 (2011), paras. 4 and 6.

[129] Council of Europe resolution 1857 (2012).

[130] European Court of Human Rights, *Al-Saadoon and Mufdhi v. the United Kingdom*, Application No. 61498/08, Judgement of 4 October 2010, para. 120; *Kozhayev v. Russia*, Application No. 60045/10, Judgement of 5 June 2012, para. 81.

[131] European Court of Human Rights, *Al Nashiri v. Poland*, Application No. 28761/11, Judgement of 24 July 2014, para. 577.

[132] Council of the European Union, "EU guidelines on death penalty", document No. 8416/13 (Brussels, 12 April 2013), annex.

[133] European Parliament resolution No. P7_TA (2010) 0351 of 7 October 2010 on the World Day against the Death Penalty; European Parliament resolution of 10 March 2011 on the European Union approach towards Iran (2010/2050(INI)); European Parliament, "Death penalty in Belarus, in particular the cases of Dzmitry Kanavalau and Uladzislau Kavalyou (012/2539(RSP))", (Brussels, 16 February 2012); European Parliament resolution of 23 May 2013 on India: execution of Mohammad Afzal Guru and its implications (2013/2640(RSP)).

In addition, the European Union (together with other donors) is funding a project of Penal Reform International to campaign for the progressive abolition of the death penalty and its replacement with humane alternative sanctions in 10 countries in four regions. The project includes workshops for parliamentarians and journalists.[134]

48. On 3 July 2013, the Parliamentary Assembly of the Organization for Security and Cooperation (OSCE) in Europe "call[ed] upon the two remaining OSCE participating States still practising capital punishment, Belarus and the United States, to adopt a moratorium on all executions, leading to the complete abolition of the death penalty".[135] The Office for Democratic Institutions and Human Rights of the OSCE produces an annual background paper on the use of the death penalty in OSCE member States.

F. World congresses and networks

49. Two world congresses against the death penalty were held during the reporting period, in Geneva from 24 to 26 February 2010 and in Madrid from 12 to 15 June 2013. The congresses are organized by Together against the Death Penalty and are supported financially by several Governments, including France, Norway, Spain and Switzerland. The Geneva Congress was the occasion for the creation of the International Commission against the Death Penalty, chaired by Federico Mayor, the former Director-General of the United Nations Educational, Scientific and Cultural Organization. Other initiatives during the reporting period include the establishment of the International Academic Network for the Abolition of Capital Punishment (REPECAP) in Madrid in December 2009, the Anti-Death Penalty Asia Network, the World Coalition Against the Death Penalty, Universities against the Death Penalty, formed at the University of Oslo in November 2013, and Death Penalty Worldwide, a website based at the Cornell University Law School.

G. International treaty obligations

50. International treaties at both the universal and the regional levels bind States parties to the abolition of capital punishment. The status of signature, ratification and accession of these treaties is set out in table 5.

51. As of the beginning of 2009, 70 countries were parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,[136] which was adopted in 1989 and entered into force in 1991. Eight countries ratified or acceded to the Second Optional Protocol during the quinquennium: Benin, Bolivia (Plurinational State of), Brazil, Guinea-Bissau, Kyrgyzstan, Latvia, Mongolia and Nicaragua. El Salvador, Gabon and Poland ratified the Protocol in April 2014. Angola, Madagascar and Sao Tome and Principe have signed the Second Optional Protocol but have yet to ratify it. In its report to

[134] Penal Reform International, death penalty project, available at www.penalreform.org.

[135] Organization for Security and Cooperation in Europe, *Istanbul Declaration and Resolutions*, adopted by the OSCE Parliamentary Assembly at the twenty-second annual session, held in Istanbul, Turkey, from 29 June to 13 July 2013, chap. III, para. 143.

[136] United Nations, *Treaty Series*, vol. 1642, No. 14688.

the Human Rights Council, Angola noted the signature of the Second Optional Protocol, saying it was "in the process of ratification".[137] Several States parties to the International Covenant on Civil and Political Rights have fully abolished the death penalty in law but have not signed or ratified the Second Optional Protocol. Those States are Burundi, Cambodia, Côte d'Ivoire, Mauritius, Nauru, Palau, Samoa, Senegal, Togo and Vanuatu.

52. Article 1 of the Second Optional Protocol allows a State that has not fully abolished the death penalty to ratify or accede to the Second Optional Protocol, provided that there is a moratorium in place and that it takes "all necessary measures" in order to abolish capital punishment. Three States parties that have ratified the Second Optional Protocol — Liberia, Benin and Mongolia — are not yet abolitionist in law. Other States considered abolitionist de facto have confirmed their intention to ratify or accede to the Second Optional Protocol as part of the universal periodic review. For example, Sierra Leone accepted "in principle" recommendations that it ratify or accede to the Second Optional Protocol, "subject to constitutional review".[138] Somalia accepted such recommendations, saying "the Government will look into the matter regarding the second Optional Protocol to the [Covenant], aiming at the abolition of the death penalty".[139] Suriname[140] and Tajikistan[141] also accepted such recommendations.

53. Seven States that have abolished the death penalty — Bhutan, the Cook Islands, the Holy See, Kiribati, the Marshall Islands, Micronesia and Niue — are not parties to the International Covenant on Civil and Political Rights, and as a result they cannot ratify or accede to the Second Optional Protocol. Some of those States have indicated that they cannot presently consider accession or ratification because of resource constraints.[142] Kiribati did not accept a recommendation that it ratify the International Covenant, citing "existing national capacity and resource constraints".[143]

54. Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which abolishes the death penalty except in time of war or threat of war, has been ratified by all States members of the Council of Europe with the exception of the Russian Federation, which has signed it. Protocol No. 13 to the European Convention on Human Rights, which abolishes the death penalty altogether, including in time of war, was adopted on 3 May 2002. At the beginning of the survey period, in January 2009, it had obtained 40 ratifications.

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[137] A/HRC/WG.6/20/AGO/1, para. 27.

[138] Report of the Working Group on the Universal Periodic Review: Sierra Leone (A/HRC/18/10/Add.1).

[139] "The consideration by the Government of Somalia of the 155 recommendations", communication from the Permanent Mission of Somalia to the United Nations Office at Geneva, dated 21 September 2011, para. 98.68.

[140] Report of the Working Group on the Universal Periodic Review: Suriname (A/HRC/18/12/Add.1), paras. 73.32-73.38.

[141] Report of the Working Group on the Universal Periodic Review: Tajikistan (A/HRC/19/3/Add.1), para. 90.10.

[142] Report of the Working Group on the Universal Periodic Review: Bhutan (A/HRC/27/8/Add.1), para. 2.1; report of the Working Group on the Universal Periodic Review: Kiribati (A/HRC/15/3/Add.1), para. 11; and report of the Working Group on the Universal Periodic Review: Marshall Islands (A/HRC/16/12/Add.1), para. 55.1.

[143] A/HRC/15/3/Add.1, para. 11.

During the quinquennium, Protocol No. 13 was ratified by Italy, Latvia and Spain. Poland ratified the Protocol in 2014. The Protocol has been signed by Armenia but not ratified, and it has not been signed or ratified by Azerbaijan and the Russian Federation.

55. During the reporting period, the Dominican Republic and Honduras acceded to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, bringing to 13 the number of States parties. In 2012, the Bolivarian Republic of Venezuela denounced the American Convention on Human Rights. Although the Protocol may only be ratified or acceded to by a State party to the American Convention, unlike the Convention itself the Protocol has no denunciation clause nor did the denunciation by the Bolivarian Republic of Venezuela purport to cover the Protocol.

56. The American Convention on Human Rights specifies that a State that has abolished the death penalty may not reintroduce it. Thus, States that ratify or accede to the American Convention that are abolitionist at the time have, in effect, bound themselves to an international obligation comparable to those of the protocols. Five States parties to the American Convention have abolished the death penalty but have not ratified or acceded to any of the abolitionist protocols: Bolivia (Plurinational State of), Dominican Republic, El Salvador, Haiti and Peru.

Table 5

States bound by international legal obligations with respect to the death penalty, by instrument and date of accession, ratification or signature

Country	*Second Optional Protocol to the International Covenant on Civil and Political Rights*	*Protocol No. 6 to the European Convention on Human Rights*[a]	*Protocol No. 13 to the European Convention on Human Rights*[b]	*Abolitionist States that are also parties to the American Convention on Human Rights*	*Protocol to the American Convention on Human Rights to Abolish the Death Penalty*
Albania	17/10/07	01/10/00	01/06/07		
Andorra	22/09/06	01/02/96	01/07/03		
Angola	24/09/13[b]				
Argentina	02/09/08			14/08/84	18/06/08
Armenia		01/10/03	19/5/06[b]		
Australia	02/10/90				
Austria	02/03/93	01/03/85	01/05/04		
Azerbaijan	22/01/99	01/05/02			
Belgium	08/12/98	01/01/99	01/10/03		
Benin	05/07/12				
Bolivia (Plurinational State of)	12/07/13			20/06/79	
Bosnia and Herzegovina	16/03/01	01/08/02	01/11/03		
Brazil	25/09/09[c]			09/-7/92	31/07/96
Bulgaria	10/08/99	01/10/99	01/07/03		
Cabo Verde	19/05/00				
Canada	25/11/05				
Chile	26/09/08[c]			10/08/90	04/08/08
Colombia	05/08/97			28/05/73	

Country	Second Optional Protocol to the International Covenant on Civil and Political Rights	Protocol No. 6 to the European Convention on Human Rights[a]	Protocol No. 13 to the European Convention on Human Rights[b]	Abolitionist States that are also parties to the American Convention on Human Rights	Protocol to the American Convention on Human Rights to Abolish the Death Penalty
Costa Rica	05/06/98			02/03/70	30/03/98
Croatia	12/10/95	01/12/97	01/07/03		
Cyprus	10/09/99	01/02/00	01/07/03		
Czech Republic	15/06/04	01/01/93	01/11/04		
Denmark	24/02/94	01/03/85	01/07/03		
Djibouti	05/11/02				
Dominican Republic				21/01/78	19/12/11
Ecuador	23/02/93			08/12/77	05/02/98
El Salvador	08/04/14[c]			20/06/78	
Estonia	30/01/04	01/05/98	01/06/04		
Finland	04/04/91	01/06/90	01/03/05		
France	02/10/07	01/03/86	01/02/08		
Gabon	02/04/14				
Georgia	22/03/99	01/05/00	01/09/03		
Germany	18/08/92	01/08/89	01/02/05		
Greece	05/05/97	01/10/98	01/06/05		
Guinea-Bissau	24/09/13				
Haiti				14/09/77	
Honduras	01/04/08			05/09/77	14/09/11
Hungary	24/02/94	01/12/92	01/11/03		
Iceland	02/04/93	01/06/87	01/03/05		
Ireland	18/06/93	01/07/94	01/07/03		
Italy	14/02/95	01/01/99	01/07/09		
Kyrgyzstan	06/12/10				
Latvia	19/04/13	01/06/99	26/01/12		
Liberia	16/09/05				
Liechtenstein	10/12/98	01/12/90	01/07/03		
Lithuania	27/03/02	01/08/99	01/05/04		
Luxembourg	12/02/92	01/03/85	01/07/06		
Madagascar	24/09/12[b]				
Malta	29/12/94	01/04/91	01/07/03		
Mexico	26/09/07			02/03/81	28/06/07
Monaco	28/03/00	01/12/05	06/03/06		
Mongolia	13/03/12				
Montenegro	23/10/06	06/06/06	01/06/06		
Mozambique	21/07/93				
Namibia	28/11/94				
Nepal	04/03/98				
Netherlands	26/03/91	01/05/86	01/06/06		
New Zealand	22/02/90				
Nicaragua	25/02/09			25/09/79	24/03/99
Norway	05/09/91	01/11/88	01/12/05		
Panama	21/01/93			08/05/78	27/06/91

Country	Second Optional Protocol to the International Covenant on Civil and Political Rights	Protocol No. 6 to the European Convention on Human Rights[a]	Protocol No. 13 to the European Convention on Human Rights[b]	Abolitionist States that are also parties to the American Convention on Human Rights	Protocol to the American Convention on Human Rights to Abolish the Death Penalty
Paraguay	18/08/03			18/08/89	31/10/00
Peru				12/07/78	
Philippines	20/11/07				
Poland	25/04/14	01/11/00	23/05/14		
Portugal	17/10/90	01/11/86	01/02/04		
Republic of Moldova	20/09/06	01/10/97	01/02/07		
Romania	27/02/91	01/07/04	01/08/03		
Rwanda	15/12/08				
Russian Federation		16/04/97[b]			
San Marino	17/08/04	01/04/89	01/08/03		
Sao Tome and Principe	06/09/00[b]				
Serbia	06/09/01	01/04/04	01/07/04		
Seychelles	15/12/94				
Slovakia	22/06/99	01/01/93	01/12/05		
Slovenia	10/03/94	01/07/94	01/04/04		
South Africa	28/08/02				
Spain	11/04/91	01/03/85	01/04/10		
Sweden	11/05/90	01/03/85	01/08/03		
Switzerland	16/06/94	01/11/87	01/07/03		
The former Yugoslav Republic of Macedonia	26/01/95	01/05/97	01/11/04		
Timor-Leste	18/09/03				
Turkey	02/03/06	01/12/03	01/06/06		
Turkmenistan	11/01/00				
Ukraine	25/07/07	01/05/00	01/07/03		
United Kingdom of Great Britain and Northern Ireland	10/12/99	01/06/99	01/02/04		
Uruguay	21/01/93			26/03/85	08/02/94
Uzbekistan	23/12/08				
Venezuela (Bolivarian Republic of)	22/02/93			23/06/77	06/04/94

[a] Date given is that of entry into force.
[b] Signature.
[c] Accompanied by a reservation concerning the use of capital punishment in wartime.

H. Extradition from abolitionist States to retentionist States

57. All fully abolitionist States responding to the questionnaire declared a policy of denying extradition to States where the death penalty might be imposed unless assurances were given that the individual concerned could not be sentenced to death or, if sentenced to death, the penalty would not be carried out. Some States reported

that they had received extradition requests where capital punishment was an issue and that they had sought and obtained satisfactory assurances. There were no reports of extradition from a fully abolitionist State where assurances had not been obtained, nor of requests for such assurances where these had not been provided.

58. Issues relating to extradition, expulsion or deportation of persons subject to the death penalty were considered by a number of international mechanisms during the survey period. The Human Rights Committee welcomed a 2007 judgement by the Court of Final Appeal of Macao, China, that blocked the transfer of a person to mainland China in cases where capital punishment was threatened.[144] The European Court of Human Rights adopted several decisions confirming its position that extradition, expulsion or deportation to a State in cases where there was a real risk of capital punishment was a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols No. 6 and 13.[145] The South African Constitutional Court ruled that the Government cannot deport or extradite a person charged with a capital offence if a request for written assurances that the death penalty will not be imposed has been refused by the receiving State.[146]

59. Courts will scrutinize diplomatic assurances that the death penalty will not be imposed to ensure that they are sufficient. Denmark reported that in 2010 the Ministry of Justice decided to extradite a Danish national to India based, inter alia, on an assurance from the Indian Government that the person would not be executed. The Eastern Court of Appeal subsequently, in 2011, decided that the person could not be extradited. In another case, the Inter-American Commission on Human Rights considered that the evaluation by Peruvian authorities of diplomatic assurances given by China was not adequate. The case was subsequently submitted to the Inter-American Court of Human Rights. It issued an order for provisional measures preventing the transfer to China of the applicant and held a hearing on the merits of the case in September 2014.[147]

VI. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

60. The safeguards guaranteeing protection of the rights of those facing the death penalty constitute an enumeration of minimum standards to be applied in countries

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[144] CCPR/C/CHN-MAC/CO/1, para. 11; *Al-Gertani v. Bosnia and Herzegovina* (CCPR/C/109/D/1955/2010, para. 9.5); and *Kwok v. Australia* (CCPR/C/97/D/1442/2005, para. 9.4).

[145] *Kaboulov v. Ukraine*, European Court of Human Rights, Grand Chamber, Application No. 41015/04, Judgement of 19 November 2009; *Al-Saadoon and Mufdhi v. the United Kingdom*, Application No. 61498/08, Judgement of 2 March 2010; *Chentiev and Ibragimov v. Slovakia*, Application Nos. 21022/08 and 51946/08, Judgement of 14 September 2010; *Rrapo v. Albania*, Application No. 58555/10, Judgement of 25 September 2012; *Al Nashiri v. Poland*, Application No. 28761/11, Judgement of 24 July 2014.

[146] Constitutional Court of South Africa, *Minister of Home Affairs and Others v. Tsebe and Others, Minister of Justice and Constitutional Development and Another v. Tsebe and Others* [2012] ZACC 16, 2012 (5) SA 467 (CC), 2012 (10) BCLR 1017 (CC).

[147] *Wong Ho Wing v. Peru*, Provisional Measures, Order of the Inter-American Court of Human Rights, 29 January 2014; *Wong Ho Wing v. Peru*, Provisional Measures, Order of the Inter-American Court of Human Rights, 31 March 2014.

that still impose capital punishment. Approved by the Economic and Social Council in its resolution 1984/50, the safeguards are the internationally recognized minimum standards to be observed by States that continue to impose capital punishment.

61. States that have not ratified or acceded to the relevant treaties are nevertheless bound by international standards, notably those set out in the safeguards. That the safeguards may be considered the general law applicable on the subject of capital punishment, even for those States that have not assumed any treaty obligations whatsoever with respect to the imposition of the death penalty, is borne out in the universal periodic review mechanism of the Human Rights Council. Member States report on their compliance with international human rights norms, including those in the safeguards, regardless of whether they are subject to any relevant treaty norms. Even States that are not subject to conventional obligations with respect to capital punishment have participated in the universal periodic review process as if they were subject to international norms concerning the death penalty.

A. First safeguard: "most serious crimes"

62. The first of the safeguards states: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."[148] Two main issues arise: the mandatory death penalty and the use of the death penalty for crimes that are not intentional and that do not have lethal or other extremely grave consequences.

1. Mandatory death sentences

63. According to international case law, a mandatory sentence fails to take into account the defendant's personal circumstances and the circumstances of the offence. Consequently, it does not permit distinctions to be made between degrees of seriousness of the particular crime for which the penalty is imposed.[149] Hence, it is not compatible with the limitation of capital punishment to the "most serious crimes". In January 2009, the Supreme Court of Uganda upheld a decision by the Constitutional Court of Uganda declaring that all provisions in the country's legislation authorizing the death penalty as a mandatory sentence were unconstitutional.[150] The Court of Appeal of Kenya,[151] the High Court of Kenya,[152]

[148] The norm is derived from article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

[149] *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006, para. 6.3); *Chisanga v. Zambia* (CCPR/C/85/D/1132/2002); *Weerawansa v. Sri Lanka* (CCPR/C/95/D/1406/2005, para. 7.2); *Johnson v. Ghana* (CCPR/C/110/D/2177/2012, para. 7.3); Inter-American Court of Human Rights, *Dacosta-Cadogan v. Barbados*, Series C, No. 204, para. 57; Inter-American Commission on Human Rights, Report No. 12/14, Case 12.231 (*Cash, Commonwealth of the Bahamas*), paras. 72-74.

[150] *Attorney General v. Kigula and Others*, Constitutional Appeal No. 03 of 2006, Supreme Court of Uganda, 21 January 2009.

[151] *Mutiso v. Republic*, Criminal Appeal No. 17 of 2008, Kenya, Court of Appeal at Mombasa, 30 July 2010.

[152] *Ayub Bainito and Others v. Attorney General of Kenya*, Petition No. 2 of 2011, High Court of Kenya at Kisumu, judgement issued on 28 January 2013.

the High Court Division of the Bangladesh Supreme Court,[153] the High Court of Lagos State in Nigeria,[154] the High Court of Judicature of Bombay,[155] the Supreme Court of India[156] and the Judicial Committee of the Privy Council in a case in Trinidad and Tobago[157] made similar rulings. However, the Court of Appeal of Singapore refused to follow the same reasoning and rejected a judicial challenge to mandatory death sentences.[158]

64. The Special Rapporteur on extrajudicial, summary and arbitrary executions, in his 2012 report to the Human Rights Council, pointed to other problems with mandatory sentences, including the fact that they are often prescribed for crimes that otherwise do not meet the "most serious" requirement. He has noted that although at least 29 States retain a mandatory death sentence for specific offences, "there is growing State consensus that it is unlawful as an arbitrary deprivation of life". The Special Rapporteur pointed to the rejection of mandatory death sentences by at least 18 States since 2008, adding that other States, including Bangladesh, Guyana, India, Kenya, Malawi and Uganda, have recently turned against mandatory death sentences for specific crimes.[159]

65. In replies to the questionnaire, a few States indicated the existence of legal provisions requiring the mandatory death penalty for certain crimes although there was no evidence that it was actually being imposed systematically or, for that matter, at all, given that the States were all de facto abolitionist. Thus, El Salvador said that the death penalty was mandatory under its Code of Military Justice for treason, espionage and rebellion perpetrated in an international war. Israel reported a mandatory death penalty in legislation dealing with genocide, treason and military law. Thailand said there was a mandatory death penalty for killing a parent or an official in service, robbery causing the death of another person, producing, importing or exporting narcotics, coercing a woman or a person below 20 years of age to consume heroin, murder or attempted murder of the King, the Queen, the heir apparent or the Regent and desertion constituting defection to the enemy. Trinidad and Tobago said that the death penalty was mandatory for murder and treason.

2. Crimes for which the death penalty should not be applied

66. Most of the discussion on this safeguard concerned the question of which crimes should actually be excluded from the application of the death penalty, meaning that they cannot be considered "intentional crimes with lethal or other extremely grave consequences". The Human Rights Council, the Human Rights

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[153] *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh* (2010) 30 BLD (HCD) 194.

[154] *Ajulu and Others v. Attorney General of Lagos*, Suit No. ID/76M/2008, 29 June 2012.

[155] *Indian Harm Reduction Network v. Union of India*, Criminal Writ Petition No. 1784 of 2010, High Court of Judicature at Bombay, 11 June 2010.

[156] *State of Punjab v. Dalbir Singh*, Supreme Court of India, 1 February 2012.

[157] *Nimrod Miguel v. The State* [2011] UKPC 14, Privy Council Appeal No. 0037 of 2010 (appeal taken from Trinidad and Tobago).

[158] *Yong Vui Kong v. Public Prosecutor and Another Matter* [2010] SGCA 20, Criminal Appeal No. 13 of 2008; Criminal Motion No. 7 of 2010, Court of Appeal of Singapore, 14 May 2010.

[159] A/67/275, paras. 61-65.

Committee and regional bodies[160] have all listed specific crimes that should not be considered "most serious crimes".[161]

67. The Special Rapporteur on extrajudicial, summary or arbitrary executions has explained that because the term "most serious crimes" is an international standard, States are not free to claim they comply with it merely because the crime in question is seen as serious in their specific context. Accordingly, "this consideration rules out such moral crimes as apostasy and homosexual conduct. In most countries these are not crimes at all, let alone viewed as 'most serious crimes'".[162] With reference to various sources including General Assembly resolutions on capital punishment, the Special Rapporteur has insisted that the concept of "most serious crimes" must be informed by the objective of progressive restriction of the scope of capital punishment with a view to its abolition.[163]

68. The Human Rights Committee criticized Kenyan legislation allowing the death penalty for crimes such as robbery with violence, saying this did not meet the "most serious crimes" standard.[164] During consideration of the periodic report of Cuba, the Committee against Torture expressed concerns about the high number of offences that carry the death penalty, including common crimes and vaguely defined categories of State security-related offences.[165] In March 2013, the United Nations High Commissioner for Human Rights strongly condemned the execution of seven individuals in Saudi Arabia who had been charged with organizing a criminal group, armed robbery and breaking into jewellery stores.[166]

3. Crimes for which the death penalty is applicable in Member States

69. Some States have taken action to reduce the number of offences for which the death penalty applied. China informed the Human Rights Council that in 2011, it abolished the death penalty for 13 separate non-violent economic crimes, accounting for 19.1 per cent of the capital crime category.[167] Viet Nam reported that its Penal Code had been amended in 2009, abolishing the death penalty for 8 crimes and lowering the number of crimes subject to the death penalty from 29 to 21, with further reductions being considered.[168]

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[160] The latest version of the European Union guidelines on the death penalty states: "The death penalty must not be imposed for non-violent acts such as financial or economic crimes, or because of political offences or rivalries. It shall also not be imposed for drug-related crimes, religious practices or expression of conscience, or for sexual relations between consenting adults, it also being understood that scope should never go beyond the most serious intentional crimes." ("EU Guidelines on Death Penalty", document 8416/13, annex, 12 April 2013), para. III (i).

[161] See E/2010/10 and Corr.1, paras. 63 and 64.

[162] A/67/275, para. 38.

[163] Ibid., para. 42.

[164] CCPR/C/KEN/CO/3, para. 10.

[165] CAT/C/CUB/CO/2, para. 14.

[166] Office of the High Commissioner for Human Rights, "Pillay says Saudi Arabian executions violate international standards", press release, 14 March 2013.

[167] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: China (A/HRC/WG.6/17/CHN/1), para. 46.

[168] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Viet Nam (A/HRC/WG.6/18/VNM/1), para. 10.

70. Several States reported on the crimes for which the death penalty was applicable. Nigeria said that offences that were punishable by death include murder, treason, directing or presiding at an unlawful trial by ordeal from which death results, and armed robbery.[169] Singapore reported that capital punishment was available for murder, offences involving firearms and drug trafficking. It said that the death penalty had deterred major drug syndicates from establishing themselves in Singapore.[170]

71. The Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea reported that extremely grave cases of smuggling jewellery and precious metals and illegally selling the State's resources had recently been made subject to the death penalty.[171] The United Nations Political Office for Somalia reported that military courts in Puntland and Somaliland continued to impose the death penalty for a broad range of crimes under their anti-terrorism laws. In March 2013, the Nugaal Military Court in Puntland sentenced to death two men who were accused of possession of explosives, wires and detonators under section 7 of the Puntland Anti-Terrorism Law of 2010. In April 2013, the military authority in Puntland executed 13 individuals suspected of having links with a terrorist organization.[172]

72. Thirty-two countries or territories appear to have provisions in their legislation authorizing the death penalty for drug-related offences, though only a few of these countries actually impose and enforce this punishment. The majority of executions conducted in the Islamic Republic of Iran were reported to be for drug crimes.[173] As many as 4,000 Afghan refugees are believed to be on death row in the Islamic Republic of Iran for drug-related offences. Death sentences for drug offences have also been reported in China, the Democratic People's Republic of Korea, Indonesia, Singapore, Thailand and Viet Nam.[174]

73. In addition, the Islamic Republic of Iran may impose the death penalty for *moharebeh* ("enmity against God"), which may be applied to anyone found responsible for taking up arms, whether for criminal purposes or against the State, or even belonging to an organization taking up arms against the State. In June 2012, four individuals were executed for *moharebeh* in connection with alleged crimes committed during the widespread political protests in Khuzestan in the south-west region of the Islamic Republic of Iran in 2011. In a joint statement issued in January 2013, a group of special procedures mandate holders of the Human Rights Council urged the Iranian authorities to halt the execution of five individuals: those individuals were members of the Ahwazi community and were at imminent risk of execution for charges including *moharebeh* and *mofsed fil-arz* ("corruption on

[169] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Nigeria (A/HRC/WG.6/17/NGA/1), para. 53.

[170] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Singapore (A/HRC/WG.6/11/SGP/1), para. 120.

[171] A/HRC/25/CRP.1, para. 619.

[172] A/HRC/24/18, para. 13.

[173] Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 (A/HRC/WG.6/20/IRN/3), para. 15.

[174] A/HRC/21/29, para. 25.

Earth") and spreading propaganda against the system.[175] The revised Islamic Penal Code, which came into force in June 2013, provides for the death penalty for sodomy for the non-Muslim party in same-sex relations, insulting the Prophet Muhammad, possessing or selling illicit drugs, rape, *qisas* (retribution in kind), certain other *hudud* crimes and theft for the fourth time.[176]

74. Some States provide for the death penalty for crimes related to religious matters, such as blasphemy and apostasy. In 2010, special procedures mandate holders sent an appeal to Pakistan following reports that a member of the Christian minority had been sentenced to death for blasphemy.[177] In 2010, there were reports that the chair of the Pastoral Council of the Church of Iran had been held on charges of apostasy for which he was subject to the death penalty, although he was finally acquitted following a retrial.[178] In April 2012, the Parliament of Kuwait adopted an amendment to the Criminal Code that made blasphemy subject to the death penalty.[179]

B. Second safeguard: non-retroactivity

75. The second safeguard states: "Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby". No information was forthcoming to suggest that the laws of any of the responding countries, or any other country, allowed the death penalty to be applied retroactively if the law specifying capital punishment had not been in effect prior to the commission of the offence. Several countries indicated that there was no possibility of retroactive imposition of the death penalty.

C. Third safeguard: juveniles, pregnant women and other categories

76. The third safeguard states: "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane". The third safeguard was amplified by the Economic and Social Council in 1988 with the words "persons suffering from mental retardation or extremely limited mental competence".[180]

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[175] Office of the United Nations High Commissioner for Human Rights, "Iran: UN rights experts urge Government to halt the execution of five Ahwazi activists", press release, 25 January 2013.

[176] Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Islamic Republic of Iran (A/HRC/WG.6/20/IRN/2), para. 3; and A/HRC/19/82, para. 8.

[177] A/HRC/16/53/Add.1, paras. 326-335.

[178] A/HRC/18/51, p. 26.

[179] A/HRC/21/29, para. 19.

[180] Economic and Social Council resolution 1989/64, para. 1 (d).

1. Persons below 18 years of age

77. The prohibition of executions for crimes committed by persons below 18 years of age appears in several international human rights conventions.[181] It is also set out in three international humanitarian law conventions.[182] There is authority for the view that the prohibition against executions for crimes committed by persons below 18 years of age is a norm of customary international law.[183] The Human Rights Council called upon States "to abolish by law and in practice, as soon as possible, the death penalty and life imprisonment without possibility of release for those under 18 years of age at the time of the commission of the offence". It also called upon States "to commute immediately such sentences and to ensure that any child previously sentenced to the death penalty or life imprisonment without possibility of release is removed from special prison facilities, especially from death row, and transferred to regular institutions of detention appropriate for the age of the offender and the offence committed".[184] The recently adopted United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice[185] reiterates that call.

78. All of the reporting States that retain the death penalty indicated that they do not allow the execution of persons for crimes committed by persons below 18 years of age. In the course of the universal periodic review, Yemen insisted that there was no provision in Yemeni law authorizing the imposition of the death penalty on juveniles. It said that a committee had been established with the assistance of experts from Jordan to ensure that children were not executed. Of the 25 detainees on death row suspected of being children, only three had been found to be under 18, and their sentences had been revised even though they had been ratified by the President and returned to the High Court.[186] On the other hand, Saudi Arabia did not address the concerns about execution of juveniles that were raised by Member States during the universal periodic review.[187] A provision in the new Constitution of Zimbabwe adopted in 2013 states that the death sentence shall not be passed upon an offender who was under the age of 21 at the time of the punishable act.[188]

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[181] Convention on the Rights of the Child (United Nations, *Treaty Series*, vol. 1577, No. 27531), art. 37 (a); American Convention on Human Rights (United Nations, *Treaty Series*, vol. 1144, No. 17955), art. 4, para. 5; African Charter on the Rights and Welfare of the Child, *Human Rights: A Compilation of International Instruments, vol. II: Regional Instruments* (United Nations publication, Sales No. E.97.XIV.1), sect. C, No. 39, art. 5, para. 3.

[182] Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (United Nations, *Treaty Series*, vol. 75, No. 973.), art. 68; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (United Nations, *Treaty Series*, vol. 1125, No. 17512), art. 77, para. 5; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (United Nations, *Treaty Series*, vol. 1125, No. 17513), art. 6, para. 4.

[183] Inter-American Commission on Human Rights, Report No. 62/02, Case 12.285 (*Domingues, United States*), para. 67; and Subcommission on the Promotion and Protection of Human Rights resolution 2000/17 (see E/CN.4/2001/2, chap. II, sect. A).

[184] Human Rights Council resolution 19/37, paras. 51 and 52.

[185] General Assembly resolution 69/194, annex.

[186] Report of the Working Group on the Universal Periodic Review: Yemen (A/HRC/26/8), para. 52.

[187] Report of the Working Group on the Universal Periodic Review: Saudi Arabia (A/HRC/25/3), para. 97.

[188] Zimbabwe, Constitution, Amendment No. 20 (2013), sect. 48 (2) (c) (ii).

79. Yet despite the universally accepted nature of the prohibition on executions for crimes committed by children, reports of this practice in certain States persist. During the reporting period several countries, including Iran (Islamic Republic of), Nigeria, Pakistan, Saudi Arabia, the United Arab Emirates and Yemen, imposed death sentences for crimes committed by persons below 18 years of age.[189] Reports indicate that Iran (Islamic Republic of), Iraq, Saudi Arabia and Yemen actually executed children during the reporting period.[190] Legislation adopted by the Parliament of the Islamic Republic of Iran in January 2012 states that a person below 18 who commits offences under categories of *hudud* and *qisas* will not be sentenced to death if the court decides, through forensic reports or any other appropriate means, that the offender did not have adequate mental maturity and ability to reason.[191] In some States, executions of juvenile offenders may be attributed to the lack of birth registration and difficulties in determining the age of children. The Special Representative of the Secretary-General on Violence against Children has recommended that, where it is not possible to conclusively determine the age of the child at the time of offence, she or he should be presumed to be below 18.[192]

2. Pregnant women and new mothers

80. All States that replied to the questionnaire indicated that they do not allow the execution of pregnant women. Indeed, there does not appear to be any country anywhere that allows the execution of a pregnant woman, and there are no reports of any such executions in modern times.

81. Provisions vary with regard to a woman after she has given birth. In its reply to the questionnaire, Egypt reported that a death sentence is not carried out until two months after the mother has given birth. Thailand said execution was delayed by three years following the birth of a child. Many States do not make any allowance for such cases in their legislation, with the result that, in theory at least, new mothers are subject to the same legislation as everyone else.

82. Some States that still provide for capital punishment in their legislation have excluded women altogether from its scope. Belarus and Kazakhstan do not allow the imposition of the death penalty on women. A provision in the new Constitution of Zimbabwe adopted in 2013 states that capital punishment "must not be imposed or carried out on a woman".[193]

83. It should be noted that the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) require States to take into account the needs of nursing mothers and women with children.[194]

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[189] A/HRC/18/20, para. 28.
[190] A/HRC/24/18, para. 63.
[191] A/HRC/21/29, para. 8.
[192] A/HRC/24/18, para. 65.
[193] Zimbabwe, Constitution, Amendment No. 20 (2013), sect. 48 (2) (d).
[194] General Assembly resolution 65/229, annex.

3. Older persons

84. In its resolution 1989/64, the Economic and Social Council recommended that States establish a maximum age beyond which a person may not be sentenced to death or executed. In reply to the questionnaire, Guatemala indicated that the maximum age for imposition of capital punishment was 60. Japan reported that there was no maximum age. Belarus informed the Human Rights Council that the death penalty was not applicable to men who had reached the age of 65 at the time of sentencing.[195] China reported that in 2011 legislation was adopted providing that any person 75 years of age or older at the time of trial is exempt from application of the death penalty.[196] The transitional Constitution of South Sudan, which entered into force in 2011, prohibits imposing the death penalty on persons who are more than 70 years of age.[197] A provision in the new Constitution of Zimbabwe adopted in 2013 states that the death sentence shall not be passed upon an offender who is over the age of 70 years.[198]

4. Persons with mental or intellectual disabilities

85. The final category of persons sheltered from capital punishment by the third safeguard consists of "persons who have become insane". The Economic and Social Council subsequently added the recommendation that Member States eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".[199] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has described the imposition and enforcement of the death penalty in the case of persons with mental disabilities as particularly cruel, inhuman and degrading and in violation of article 7 of the International Covenant on Civil and Political Rights and articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[200] Likewise, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "it is a violation of death penalty safeguards to impose capital punishment on individuals suffering from psychosocial disabilities".[201]

86. There is virtually no information on this issue in the replies to the questionnaires, in the materials generated by the universal periodic review process or in the work of the treaty bodies. During the survey period, cases concerning the execution of persons with mental or intellectual disabilities were considered by the Inter-American Commission on Human Rights. The Commission held that States had two main obligations. First, they had a duty to survey all records and information in their possession concerning the mental health of a person accused of

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[195] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Belarus (A/HRC/WG.6/8/BLR/1), para. 89.

[196] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: China (A/HRC/WG.6/17/CHN/1), para. 46.

[197] A/HRC/21/29, para. 7.

[198] Zimbabwe, Constitution, Amendment No. 20 (2013), sect. 48, para. 2 (c) (ii).

[199] Economic and Social Council resolution 1989/64, para. 1 (d).

[200] A/67/279, para. 58.

[201] Office of the High Commissioner for Human Rights, "Death row: UN expert urges US authorities to stop execution of two persons with psychosocial disabilities", press release, 17 July 2012.

a capital offence. Second, the State must provide any indigent person with the means necessary to have an independent mental health evaluation done in a timely manner.[202] Moreover, when there was an indication that an accused or convicted person in a death penalty case might have a mental or intellectual disability, the State had the obligation, at any time in the proceedings, to address the claim on the merits.[203]

D. Fourth safeguard: presumption of innocence

87. The fourth safeguard provides that capital punishment may be imposed only "when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". This is an original formulation, although it may also be taken as a rather firm restatement of the presumption of innocence, something solidly anchored in international human rights treaties and whose application to all criminal trials, not only those involving the death penalty, is unquestioned. The retentionist countries that responded to the questionnaire confirmed that this norm is respected in their legal systems. None reported any case of a death sentence being overturned because the conviction was deemed unsafe.

88. Difficulties in this respect have arisen in cases where there has been a miscarriage of justice. The possibility that an innocent person might be executed has proved to be one of the most unsettling aspects of the practice of the death penalty.

89. The Inter-American Commission has also considered issues relating to the admissibility of evidence in the context of the right to a fair trial. In sentencing proceedings in the United States, the prosecution tendered evidence of an additional crime that the accused was alleged to have committed despite the fact that he was never charged or convicted of the offence. The evidence was intended to be an aggravating factor for consideration by the jury in determining whether or not to impose the death penalty. According to the Commission, this amounts, "effectively, to presum[ing] the defendant's guilt and impos[ing] punishment for the other unadjudicated crimes, but through a sentencing hearing rather than a proper and fair trial process accompanied by all of the substantive and procedural protections necessary for determining individual criminal responsibility".[204]

E. Fifth safeguard: fair trial guarantees

90. The fifth safeguard states: "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights,

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[202] Inter-American Commission on Human Rights, Report No. 52/13, Cases 11.575, 12.333 and 12.341 (*Lackey and Others, United States*; *Flores, United States*; and *Chambers, United States*), para. 219.

[203] Inter-American Commission on Human Rights, Report No. 44/14, Case 12.873 (*Arias, United States*), para. 165.

[204] Inter-American Commission on Human Rights, Report No. 90/09, Case 12.644 (*Medellín, Cárdenas and García, United States*), para. 145.

including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

91. The Economic and Social Council, in its resolution 1989/64, recommended that Member States should afford "special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases". The Economic and Social Council in its resolution 1996/15 encouraged Member States in which the death penalty had not been abolished to ensure that each defendant facing a possible death sentence was given all guarantees to ensure a fair trial, as provided in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners.[205] It also encouraged States to ensure that defendants who did not sufficiently understand the language used in court were fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence considered in court.

92. States responding to the survey questionnaire confirmed that they provided relevant fair trial guarantees. Additional information was generated by the universal periodic review mechanism and through the work of the treaty bodies. For example, China reported that in 2010 the Supreme People's Court and other organs of the Central Government jointly issued "regulations on issues arising in connection with the examination and evaluation of evidence in death penalty cases and the exclusion of illegal evidence in criminal cases, emphasizing the need to eliminate all reasonable doubt regarding facts and evidence when applying the death penalty, and to apply strict standards when examining and evaluating evidence in such cases".[206] Further amendments to the Criminal Procedure Law came into force in 2013 authorizing the Supreme People's Court to amend death sentences in all cases. The amendments also make it mandatory to record or videotape the interrogation of individuals potentially facing the death penalty or life imprisonment. The National Human Rights Action Plan of China (2012-2015) includes measures aimed at strengthening safeguards in all death penalty cases.[207] The Human Rights Committee, in its concluding observations on the periodic report of Ethiopia, expressed concern "that death sentences are still imposed by courts for crimes which appear to have a political dimension, as well as following in abstentia trials without adequate legal safeguards".[208] The Committee against Torture expressed its serious reservations as to whether Cuba respected due process guarantees, such as the detainees' right to have adequate time and facilities to prepare their defence and to communicate with counsel of their choosing, in the last three executions that

[205] *Human Rights: A Compilation of International Instruments, Volume I (First Part), Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

[206] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: China (A/HRC/WG.6/17/CHN/1), para. 45.

[207] A/HRC/24/18, para. 7.

[208] CCPR/C/ETH/CO/1, para. 19.

were carried out after a summary procedure in 2003.[209] In April 2013, the United Nations High Commissioner for Human Rights noted that "the criminal justice system in Iraq was still not functioning adequately, with numerous convictions based on confessions obtained under torture and ill-treatment, a weak judiciary and trial proceedings that fall short of international standards. The application of the death penalty in these circumstances is unconscionable, as any miscarriage of justice as a result of capital punishment cannot be undone."[210]

93. Effective defence counsel is an important element in the right to a fair trial in capital cases. Article 14 of the International Covenant on Civil and Political Rights requires States parties to provide legal assistance to indigent defendants "in any case where the interests of justice so require". It is axiomatic that this will be the situation in all death penalty cases. In December 2012, the General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, recognizing the right to legal aid for persons facing the death penalty at all stages of the criminal justice process.[211] In November 2012, the High Commissioner for Human Rights made a statement about the imminent execution of eight people in Afghanistan, insisting that "those accused of capital offences must be effectively assisted by a lawyer at all stages of the proceedings".[212] The Committee against Torture urged Japan to guarantee effective assistance by legal counsel for death row inmates at all stages of the proceedings and to ensure the strict confidentiality of all meetings with their lawyers.[213] The Inter-American Commission on Human Rights has criticized "the deficient state of the capital public defender system in the state of Texas, which has no state-wide agency responsible for providing specialized representation in capital cases. A great majority of lawyers who handle death penalty cases in Texas are sole practitioners lacking the expertise and resources necessary to properly defend their clients, and as a result, capital defendants frequently receive deficient legal representation."[214] In another case, it held that "the right to legal representation provided by the State must be guaranteed in a manner that renders it effective and therefore requires not only that defence counsel be provided, but that defence counsel be competent in representing the defendant".[215]

94. In petitions directed against the United States, the Inter-American Commission on Human Rights found a violation of fair trial rights because evidence that might have mitigated the sentence imposed was not produced at trial.[216] According to the

[209] CAT/C/CUB/CO/2, para. 14.

[210] Office of the High Commissioner for Human Rights, "Pillay condemns rampant use of death penalty in Iraq", press release, 19 April 2013.

[211] General Assembly resolution 67/187, annex, para. 20.

[212] Office of the United Nations High Commissioner for Human Rights, "Press briefing notes on Syria, Afghanistan and Haiti", 7 October 2014.

[213] CAT/C/JPN/CO/2, para. 15.

[214] Inter-American Commission on Human Rights, Report No. 90/09, Case 12.644 (*Medellín, Cárdenas and García, United States*), para. 139.

[215] Inter-American Commission on Human Rights, Report No. 52/13, Cases 11.575, 12.333 and 12.341 (*Lackey and Others, United States*; *Flores, United States*; and *Chambers, United States*), para. 202.

[216] Inter-American Commission on Human Rights, Report No. 90/09, Case 12.644 (*Medellín, Cárdenas and García, United States*), para. 143; Report No. 81/11, Case 12.776 (*Landrigan, United States*), para. 45; Report No. 53/13, Case 12.864 (*Teleguz, United States*), paras. 92-94.

Commission, "the fundamental due process and fair trial requirements for capital trials include the obligation to afford adequate legal representation, and that the failure to develop and present potentially mitigating evidence in a capital case would constitute inadequate representation, the Commission has analysed the information presented by both parties as to trial preparation, and specifically the failure to seek, develop or present elements that were in fact available in mitigation of the gravity of the crime. As a consequence of this failure on the part of the state-appointed counsel in a crucial phase of the process, the Inter-American Commission concludes that the United States violated Mr. Tamayo's right to due process and to a fair trial."[217] The Commission has also pronounced itself on the importance of full disclosure by the prosecution in capital cases. It said that "in cases involving the death penalty, the State has an enhanced obligation to guarantee that no evidence favourable to the accused is withheld, as this could change the outcome of the trial and give rise to an arbitrary deprivation of life".[218]

95. The new European Union guidelines on the death penalty emphasize that it must not be applied or used in a discriminatory manner on any ground including political affiliation, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. A number of States retain laws that allow for the imposition of the death penalty against those found guilty of offences relating to consensual, adult, same-sex relationships. Such crimes are not consistent with the "most serious crimes" standard of the first safeguard. Moreover, they are discriminatory in nature, reinforce stigma and fuel discrimination and violence against anyone perceived to be homosexual. In Uganda, a bill remains before Parliament which, if passed in its present form, would allow for the imposition of the death penalty in cases of so-called "aggravated homosexuality", including against repeat offenders and those who are HIV-positive.[219] In concluding observations concerning the Islamic Republic of Iran, the Human Rights Committee expressed concern "that members of the lesbian, gay, bisexual, and transgender community face harassment, persecution, cruel punishment and even the death penalty".[220]

96. In its periodic report to the Human Rights Committee, the United States said that a serious area of concern was "the overrepresentation of minority persons, particularly Blacks/African Americans, in the death row population (approximately 41.5 per cent of the 2009 death row population was Black or African American, a much higher percentage than the general representation in the population)". The report explained that Attorney General Eric Holder had authorized a study of racial disparities in the federal death penalty during his tenure as Deputy Attorney General in the Clinton Administration. According to the periodic report, the study "found wide racial and geographic disparities in the federal government's requests for death sentences". In July 2011, the federal Department of Justice implemented a new capital case review protocol in order to address this situation.[221]

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[217] Inter-American Commission on Human Rights, Report No. 44/14, Case 12.873 (*Arias, United States*), para. 151.

[218] Inter-American Commission on Human Rights, Report No. 53/13, Case 12.864 (*Teleguz, United States*), para. 98.

[219] A/HRC/24/18, para. 73.

[220] CCPR/C/IRN/CO/3, para. 10.

[221] CCPR/C/USA/4, para. 655.

97. The Inter-American Commission on Human Rights held that principles of equality before the law had been violated in a capital case where the applicant was not able to avail himself of a review mechanism that benefited one group of persons who had been sentenced to death following a procedure that was judged by the Supreme Court to be unconstitutional. He was ineligible because of the procedural stage that his own case was at, a position justified by the State on grounds of judicial economy, certainty and legal security. The Commission referred to "the strict scrutiny demanded by this case, explaining "that justifications that might be legitimate in matters of another kind are not allowable when the imposition and application of the death penalty are involved". The Commission held that "the distinction applied to Jeffrey Landrigan's case is not reasonable, and that the differentiated legal treatment received from the courts constitutes inadmissible discrimination".[222]

98. Access to consular services is an important aspect of the protection of foreign nationals facing the death penalty. The Inter-American Commission has described information about the right of consular notification and assistance to be "a fundamental component of the due process standards" under the relevant provisions of international law.[223] Many cases have been identified, in various jurisdictions, where foreign nationals were sentenced to death without them being informed of their rights to consular assistance, contrary to the provisions of the Vienna Convention on Consular Relations. Had consular assistance been provided, the trial outcome could have in some cases been different and the accused person might not have been sentenced to death. For example, with respect to one case, the Inter-American Commission on Human Rights referred to "the comprehensive assistance provided by the Mexican Government to its citizens in death penalty cases in the United States", holding "that there is a reasonable probability that, had Mr. Tamayo received consular assistance at the time of his arrest, this would have had a positive impact in the development of his criminal case. More specifically, it may well have had a positive impact on his right to an adequate defence".[224] In another case, the Commission noted how consular officials, when they were involved in trials, could be "instrumental in gathering significant evidence concerning their character and background", information that "clearly relevant to the jury's determination as to whether the death penalty was the appropriate punishment in light of their particular circumstances and those of the offence".[225]

99. In a 2011 report entitled *The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition*, the Inter-American Commission on Human Rights examined issues related to due process concerning the failure to comply with the notification requirements of the Vienna Convention on Consular Relations in the execution of foreign nationals in the United States.[226] The 2013

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[222] Inter-American Commission on Human Rights, Report No. 81/11, Case 12.776 (*Landrigan, United States*), para. 54.

[223] Inter-American Commission on Human Rights, Report No. 53/13, Case 12.864 (*Teleguz, United States*), para. 84; Report No. 52/13, Cases 11.575, 12.333 and 12.341 (*Lackey and Others, United States*; *Flores, United States*; and *Chambers, United States*), para. 195.

[224] Inter-American Commission on Human Rights, Report No. 44/14, Case 12.873 (*Arias, United States*), para. 140.

[225] Inter-American Commission on Human Rights, Report No. 90/09, Case 12.644 (*Medellín, Cárdenas and García, United States*), para. 128.

[226] OEA/Ser.L/V/II, Doc. 68, pp. 146-149.

European Union guidelines on the death penalty state that, when considering whether legal proceedings provide all possible safeguards to ensure a fair trial, due attention should be given to whether anyone suspected of or charged with a crime for which capital punishment may be imposed has been informed of the right to contact a consular representative.

100. In January 2009 the International Court of Justice found that the execution of a Mexican national in the United States in 2008 breached the United States' obligations under international law. The Court underlined that its 2004 judgment ordering the United States to review the death sentences of a number of Mexican nationals (in the light of possible failures to advise of a right to consular assistance) remains binding.[227]

F. Sixth safeguard: appeal

101. The sixth safeguard declares that any person sentenced to death shall have the right to appeal to a court of higher jurisdiction. Moreover, steps should be taken to ensure that such appeals become mandatory. The right to an appeal is set out in article 14 of the International Covenant on Civil and Political Rights, although in ordinary criminal cases not involving capital punishment the convicted person would be free not to avail of the possibility. The importance of providing for mandatory appeals or review was affirmed by the Economic and Social Council in its resolution 1989/64.

102. All States that responded to the questionnaire and that retain capital punishment indicated that there is a right to appeal from a sentence of death. Information on the issue of appeal is also found in the materials generated by the universal periodic review and the treaty bodies. According to its report to the Human Rights Council, in 2012, China adopted measures "perfecting the death penalty review procedure". New legislation provides that the Supreme People's Court shall review death penalty cases and question defendants, that any requests from the counsel for the defence should be heard by the Court, and that the Supreme People's Procuratorate may provide advice to the Court.[228] Bangladesh reported to the Human Rights Council that existing legal mechanisms provide recourse to the High Court Division of the Supreme Court, which confirms or rejects death sentences passed by a trial court. Subsequently, a defendant can appeal against the death sentence through the Appellate Division of the Supreme Court.[229] Indian law "provides for all requisite procedural safeguards" including a requirement that death sentences be confirmed by a superior court.[230] The Commission of Inquiry on

[227] Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (*Mexico v. United States of America*), (*Mexico v. United States of America*), Judgment, General List No. 139; ICGJ 349 (ICJ 2009), p. 148.

[228] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: China (A/HRC/WG.6/17/CHN/1), para. 47.

[229] Report of the Working Group on the Universal Periodic Review: Bangladesh (A/HRC/24/12/Add.1), p. 5.

[230] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India (A/HRC/WG.6/13/IND/1), para. 28.

human rights in the Democratic People's Republic of Korea reported there is no appeal or judicial review of death sentences.[231]

103. The Human Rights Committee has examined the requirement of an appeal in death penalty cases in Belarus, where a conviction and sentence of death may indicate that it is not subject to further appeal. A supervisory review mechanism exists, but the Committee has noted that it "only applies to already executory decisions and thus constitutes an extraordinary means of appeal which is dependent on the discretionary power of judge or prosecutor. When such review takes place, it is limited to issues of law and does not permit any review of facts and evidence and therefore cannot be characterized as an 'appeal'." The Committee notes that even if a system of appeal may not be automatic, the State party bears a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.[232] The appeal or review must be conducted promptly and without delay, failing which the right will be deemed to have been violated.[233] The Inter-American Commission on Human Rights has described certain post-conviction review procedures in the United States, which are very limited in scope, to be incompatible with the right to an appeal in death penalty cases.[234]

G. Seventh safeguard: pardon or commutation

104. The seventh safeguard states: "Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment". In its resolution 1989/64, the Economic and Social Council recommended that Member States provide "provisions for clemency or pardon in all cases of capital offence". Moreover, in resolution 1996/15, the Council called upon Member States to "ensure that officials involved in decisions to carry out an execution were fully informed of the status of appeals and petitions for clemency of the prisoner in question".

105. The reporting period saw instances of large-scale commutations of death sentences. In January 2009, the President of Ghana commuted all remaining death sentences (around 500) to prison terms, while the President of Zambia commuted over 50 death sentences. In Kenya, in August 2009, the President commuted the death sentences of at least 4,000 prisoners to life imprisonment and ordered a government study on the impact of the death penalty on crime levels.[235] The Committee against Torture welcomed the move, but noted that there were still 1,600 people left on death row in a State that had been de facto abolitionist for a quarter of a century.[236] In Morocco, in July 2009, the death sentences of 32 prisoners were commuted to life imprisonment on the occasion of the

[231] A/HRC/25/CRP.1, para. 758.

[232] *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011, para. 11.6).

[233] *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006, para. 6.6); *Kamoyo v. Zambia* (CCPR/C/104/D/1859/2009, para. 6.3).

[234] Inter-American Commission on Human Rights, Report No. 53/13, Case 12.864 (*Teleguz, United States*), paras. 100-114.

[235] A/HRC/15/19, para. 14.

[236] A/68/44, p. 142.

tenth anniversary of the King's accession to the throne.[237] On 27 April 2011, the President of Sierra Leone commuted all death sentences to life imprisonment, and three death row prisoners were given a pardon.[238] In Tunisia, a presidential amnesty was granted on 14 February 2012 converting death sentences of 122 prisoners to terms of imprisonment.[239]

106. Oman informed the Human Rights Council that "the overwhelming majority of capital punishment sentences are commuted ... In the final analysis and in accordance with law, capital punishment can only be carried out with the approval of His Majesty the Sultan. In many cases clemency is granted."[240] Bangladesh noted the availability of presidential pardon.[241] Kuwait said that capital punishment was carried out only after the ratification of the Emir of Kuwait, who had the right to commute the sentence.[242]

107. The Inter-American Commission on Human Rights held that the procedure for granting mercy in the Bahamas does not guarantee condemned prisoners with an effective or adequate opportunity to participate in the mercy process, thereby breaching the right of condemned prisoners to apply for amnesty, pardon or commutation of sentence. This includes a right to be informed of when the competent authority will consider the offender's case, to make representations in person or by counsel to the competent authority and to receive a decision from that authority within a reasonable period of time prior to execution.[243] Its view is that the right to apply for amnesty, pardon or commutation, "while not necessarily subject to full due process protections, is subject to certain minimal fairness guarantees for condemned prisoners in order for the right to be effectively respected and enjoyed".[244] Similarly, "the Texas Board of Pardons and Paroles when considering petitions filed on behalf of persons sentenced to death does not allow for opportunities to view the evidence submitted in opposition to clemency requests and that this body does not report on the reasons for its recommendation to reject a clemency petition". According to the Commission, this falls short of minimum standards.[245] It reached the same conclusion with respect to the State of Virginia, where it is the Governor who has the authority to grant a pardon. The Commission held that "in particular, the fact that the person vested with the power to commute Mr. Teleguz's capital punishment sentence is the same person who was in charge of his prosecution, does not satisfy the minimal fairness guarantees such as the right to

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[237] A/HRC/15/19, para. 14.

[238] Report of the Working Group on the Universal Periodic Review: Sierra Leone (A/HRC/18/10), para. 29.

[239] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Tunisia (A/HRC/WG.6/13/TUN/1, para. 63).

[240] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Oman (A/HRC/WG.6/10/OMN/1), para. 78.

[241] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Bangladesh (A/HRC/WG.6/16/BGD/1), para. 51.

[242] Report of the Working Group on the Universal Periodic Review: Kuwait (A/HRC/15/15), para. 39.

[243] Inter-American Commission on Human Rights, Report No. 12/14, Case 12.231 (*Cash, Commonwealth of the Bahamas*), paras. 80 and 81.

[244] Inter-American Commission on Human Rights, Report No. 90/09, Case 12.644 (*Medellín, Cárdenas and García, United States*), para. 150.

[245] Ibid., para. 152.

be heard by an impartial authority".[246] The Human Rights Committee approached this issue differently, concluding "that the discretionary power of commutation, which is specifically contemplated in relation to death sentences by article 6, paragraph 4, of the Covenant, may be vested in a Head of State or other executive body without infringing article 14".[247]

H. Eighth safeguard: stay pending challenges to death sentence

108. The eighth safeguard states that "capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence". In order to ensure that this is effective, the Economic and Social Council, in its resolution 1996/15, called upon States to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question.

109. All States responding to the questionnaire indicated that executions are stayed pending appeal and review procedures under their domestic law. More generally, the application of this norm with respect to appeals and review procedures prescribed by national law does not appear to be a source of great abuse or difficulty. However, it is also important that a pending application for amnesty, pardon or commutation have the effect of suspending a death sentence.[248] Furthermore, States must also stay an execution as long as international petition mechanisms and similar proceedings are under way. According to the Human Rights Committee, "apart from any violation of the Covenant found against a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or to frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its views concerning the implementation of the State party's obligations under the Covenant nugatory and futile".[249] In death penalty cases, flouting of interim measures causes irreparable damage to the victim of the violation and "undermines the protection of Covenant rights through the Optional Protocol".[250]

I. Ninth safeguard: minimize suffering

110. According to the ninth safeguard, "where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering". In its resolution 1996/15, the Economic and Social Council urged States to effectively apply the Standard Minimum Rules for the Treatment of Prisoners in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any

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[246] Inter-American Commission on Human Rights, Report No. 53/13, Case 12.864 (*Teleguz, United States*), para. 117.

[247] *Alekperov v. Russian Federation* (CCPR/C/109/D/1764/2008, para. 9.5).

[248] Inter-American Commission on Human Rights, Report No. 12/14, Case 12.231 (*Cash, Commonwealth of the Bahamas*), paras. 80-81.

[249] *Zhuk v. Belarus* (CCPR/C/109/D/1910/2009, para. 6.4); *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011, para. 9.4).

[250] *Zhuk v. Belarus* (CCPR/C/109/D/1910/2009, para. 6.5); *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011, para. 9.5).

exacerbation of such suffering. Whereas international human rights law generally looks at the death penalty from the perspective of the right to life, issues concerning its implementation are also relevant to the prohibition of cruel, inhuman or degrading treatment or punishment. The Commission on Human Rights, in its resolution on the death penalty, said Member States should "ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately".[251]

1. Death row

111. The term "death row" describes the prison environment of persons sentenced to death and awaiting execution. In countries where the death penalty is practised, it is very common to segregate prisoners sentenced to death. They may be subject to a special regime with respect to visiting rights of family members and legal counsel, recreation and access to employment. The international legal texts applicable to capital punishment and to detention do not address the specific concerns of prisoners on death row although some aspects have been dealt with in the case law of international human rights tribunals within the context of the prohibition of cruel, inhuman and degrading treatment or punishment and of arbitrary deprivation of liberty.[252] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has provided examples of current death row conditions around the world that include "solitary confinement for up to 23 hours a day in small, cramped, airless cells, often under extreme temperatures; inadequate nutrition and sanitation arrangements; limited or non-existent contact with family members and/or lawyers; excessive use of handcuffs or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment, or other types of prison activity".[253]

112. The Inter-American Commission on Human Rights concluded that death row conditions in Texas in the United States constitute inhumane treatment during incarceration and the imposition of cruel, infamous and unusual punishment, in violation of articles XXV and XXVI of the American Declaration of the Rights and Duties of Man. It noted that Edgar Tamayo Arias had been held under prolonged solitary confinement for almost two decades solely on the basis of the fact that he had been sentenced to death. According to the Commission, "measures of general application such as prohibiting any form of physical contact with family members and attorneys, and with other inmates, are in such a circumstance disproportionate, illegitimate and unnecessary".[254]

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[251] Commission on Human Rights resolution 2005/59, para. 7 (i).

[252] See, for example, European Court of Human Rights, *Soering v. the United Kingdom*, Application No. 14038/88 of 7 July 1989; Inter-American Court of Human Rights, *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago*, Judgement of 21 June 2002.

[253] A/67/279, para. 42.

[254] Inter-American Commission on Human Rights, Report No. 44/14, Case 12.873 (*Arias, United States*), para. 182; see also Report No. 52/13, Cases 11.575, 12.333 and 12.341 (*Lackey and Others, United States*; *Flores, United States*; and *Chambers, United States*), para. 236.

113. Observations about the inhuman conditions on death row were made by delegates to the high-level panel discussion on the question of the death penalty held by the Human Rights Council in March 2014.[255] In its report to the Human Rights Council as part of the universal periodic review, Kenya said it recognized that "extended stay on death row causes undue mental anguish and suffering, psychological trauma, anxiety and constitutes inhuman treatment".[256] In addition to the harsh carceral regime itself, death row inmates also endure the uncertainty and fear associated with the threat of execution. There is an obvious tension between the principle set out in article 10, paragraph 3, of the International Covenant on Civil and Political Rights, by which the penitentiary system is to comprise treatment of prisoners "the essential aim of which shall be their reformation and social rehabilitation" and the notion of holding detainees, often for lengthy periods of time, for the sole purpose of putting an end to their lives.

114. Although asked to do so in the questionnaire, very few States provided information about the conditions that exist on death row. In its reply, Japan said that an inmate sentenced to death remained in a single room throughout the day and night and was not permitted to have contact with other prisoners, even outside the cell. Morocco said that death row prisoners are segregated from the rest of the prison population although they enjoy all rights given to other prisoners, such as visits and breaks. Reporting to the Human Rights Council, Tunisia noted improvements in the conditions of persons condemned to death, including recognizing a right to receive visits and food from relatives.[257] In her remarks to the high-level panel discussion on the question of the death penalty, the High Commissioner for Human Rights referred with approval to recent decisions by the Supreme Court of India introducing guidelines safeguarding the rights of people on death row.[258] The Special Rapporteur has said that no prisoner, including those on death row, should be held in solitary confinement merely because of the gravity of the crime.[259]

115. Concerns about death row have become more acute in recent years precisely because of the global decline in capital punishment.[260] With each quinquennial report, the number of States that have become de facto abolitionist has grown. In many of these States, there may be an unofficial moratorium on executions but no significant change in the number of persons sentenced to death. An increase in the numbers of persons on death row is the consequence. In States that retain the death penalty, stricter attention to procedural safeguards including the right to appeal a death sentence and to apply for pardon or commutation result in longer periods of detention on death row. For example, as of 31 December 2008, in the United States the average elapsed time between sentence of death and execution was 11 years and

[255] A/HRC/27/26, para. 33.

[256] National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Kenya (A/HRC/WG.6/8/KEN/1), para. 38.

[257] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Tunisia (A/HRC/WG.6/13/TUN/1), para. 63.

[258] A/HRC/27/26, para. 9; see Supreme Court of India, *Shatrughan Chauhan and Another v. Union of India and Others*, 21 January 2014, para. 259.

[259] A/67/279, paras. 48 and 61.

[260] For guidance on the treatment of prisoners on death row, see *Handbook on Prisoners with Special Needs* (United Nations publication, Sales No. E.09.IV.4), chap. 8.

7 months.[261] Four years later, on 31 December 2012, the average elapsed time on death row had increased to 15 years and 10 months.[262]

116. Several States that are de facto abolitionist have addressed the problem by commuting death sentences to custodial terms. In its report to the Human Rights Council in the context of the universal periodic review mechanism, Cuba stated that in 2008, its Council of State commuted all death sentences to terms of 30 years to life imprisonment. It said that "today, no one is on death row in Cuba".[263] On the first anniversary of its revolution, a presidential amnesty, by which death sentences were converted to life imprisonment, was granted to all 122 persons on death row.[264] Tunisia informed the Human Rights Council that all prisoners on death row were granted a presidential amnesty, the death penalty being commuted to life imprisonment.[265] Saint Vincent and the Grenadines reported that persons on death row for over five years had their sentences commuted to life imprisonment.[266] This practice is actually generalized in Commonwealth countries that are subject to the Judicial Committee of the Privy Council, a result of the latter's rulings holding that detention on death row for more than five years constitutes inhuman or degrading treatment.

117. International case law has condemned prolonged detention on death row as a form of cruel, inhuman or degrading treatment. In a Zambian case, the Human Rights Committee recalled that "prolonged delays in the execution of a sentence of death do not per se constitute cruel, inhuman or degrading treatment" but considered that detention on death row for 13 years not only caused "psychological distress" but was also a consequence of negligent management of the prisoner's case file.[267] In another case from the same country, the Committee said that detention of more than eight years pending determination of an appeal affected the physical and mental health of the applicant. Moreover, "to impose a death sentence on a person after an unfair trial is to subject that person wrongfully to the fear that he will be executed. In circumstances where there is a real possibility that the sentence will be enforced, that fear must give rise to considerable anguish" and amount to inhuman treatment, in violation of article 7 of the International Covenant on Civil and Political Rights.[268] According to the Inter-American Commission on Human Rights, all persons deprived of liberty must receive humane treatment, commensurate with respect for their inherent dignity. This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards

[261] Tracy L. Snell, "Capital punishment, 2008: statistical tables", revised on 13 January 2010, United States of America Department of Justice (Washington, D.C., Bureau of Justice Statistics, 3 December 2009).

[262] Ibid., "Capital punishment, 2012: statistical tables (revised)", United States of America Department of Justice (Washington, D.C., Bureau of Justice Statistics, 15 May 2014).

[263] National report submitted in accordance with Human Rights Council resolution 16/21, annex, paragraph 5: Cuba (A/HRC/WG.6/16/CUB/1), para. 97.

[264] National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Tunisia (A/HRC/WG.6/13/TUN/1), para. 62.

[265] Report of the Working Group on the Universal Periodic Review: Tunisia (A/HRC/21/5/Add.1), para. 3.

[266] Report of the Working Group on the Universal Periodic Review: Saint Vincent and the Grenadines (A/HRC/18/15), para. 35.

[267] *Kamoyo v. Zambia* (CCPR/C/104/D/1859/2009, para. 6.5).

[268] *Mwamba v. Zambia* (CCPR/C/98/D/1520/2006, para. 6.8).

that apply in general to persons deprived of liberty. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under its jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty.[269]

2. Children of persons sentenced to death

118. Recently, attention has been devoted to the negative impact on the human rights of children whose parents are subject to the imposition and carrying out of the death penalty. The expression "hidden victims" is often used to describe such children. As the Special Representative of the Secretary-General on Violence against Children has explained, to date, children of parents sentenced to the death penalty had been invisible in statistics, and in policies and programmes.[270] The Quaker United Nations Office, which has done much to attract attention to this issue, has reported on academic and policy studies showing that children can suffer change or deterioration in their living situation and conditions, their relationship with others and their physical and mental well-being following the incarceration of a parent.[271] There is growing evidence of the specific and serious mental health implications for children that is attributable to the imposition of capital punishment on parents. Affected children suffer a uniquely traumatic, profoundly complicated and socially isolating loss often combined with social ostracism.[272]

119. Pursuant to a resolution of the Human Rights Council,[273] a panel discussion was held on 11 September 2013 at which a range of issues was canvassed, including the consequences on the physical and mental health of affected children, the stigma and discrimination that they may encounter, the importance of access to and information on individuals sentenced to the death penalty and the responsibility that States assume for the welfare of children if they execute one of their parents. It was stressed that States are obliged to take into account the best interests of any children when sentencing parents. Several recommendations were formulated: the convening of an expert seminar to investigate the issue further; development of further guidance regarding the form of assistance referred to in articles 9 and 20 of the Convention on the Rights of the Child, in particular by the Committee on the Rights of the Child drafting a general comment to elaborate on the issue; provision of due attention to protection of all children from all forms of violence in the context of the current development of the post-2015 agenda, as this could contribute to social progress and the realization of the Millennium Development Goals; further research both to understand the scale of the problem for those affected and the issues that individual children of parents sentenced to death experience; and what States, national human rights institutions, civil society organizations and other stakeholders can do to address challenges in the full enjoyment of the human rights of children whose parents are sentenced to the death penalty or executed. The panel called on

[269] Inter-American Commission on Human Rights, *Report on the human rights of persons deprived of liberty in the Americas* (OEA/Ser.L/V/II, Doc. 64), para. 235.

[270] A/HRC/25/33, para. 8.

[271] Helen F. Kearney, "Children of parents sentenced to death" (Geneva, Quaker United Nations Office, 2012); Oliver Robertson and Rachel Brett, "Lightening the load of the parental death penalty on children" (New York, Quaker United Nations Office, 2013).

[272] A/HRC/24/18, paras. 75-77 and 81.

[273] Human Rights Council resolution 22/11.

States that still maintain the death penalty to ensure that the rights of the child to information and last visits or communications are effectively protected, that the body of a person executed be returned to the family for burial, without payment, or that the family be informed where the body is buried and allowed reasonable access to that location; an immediate end to any form of secrecy surrounding the use of the death penalty; and compliance of domestic legislation with international standards on transparency.[274]

120. In replies to the questionnaire, a few States provided information on the situation of children where a parent has been sentenced to death or executed. Egypt reported on general provisions in its legislation governing the protection of children including placement where the child is in danger. Japan referred to legislation allowing a female inmate to nurse her baby within the penal institution until the child is 1 year of age and to continue raising the child in detention for another six months. Japan explained that these provisions also apply to a mother who is sentenced to death.

3. Family members of persons sentenced to death

121. To the extent that the conduct of the authorities when an execution takes place disregards the effects on the family members or is intentionally cruel and degrading, violations of the prohibition of cruel, inhuman and degrading treatment may be committed of which the family members are the victims. Some legal systems make special provisions so as to minimize the consequences for these "secondary victims" of the imposition of capital punishment. In its reply to the questionnaire, El Salvador said that pursuant to article 363 of the Code of Military Justice, prior to execution the offender is placed in a special cell where visits by relatives and friends are permitted. Egypt reported that the relatives of the condemned person may visit him or her on the day appointed for the execution at a place other than the place of execution. Iraq reported that the relatives of the person sentenced to death may visit him or her one day before the execution. Japan stated that family members are only informed after the execution has taken place. Thailand said there was no formal procedure to inform family members of an execution. It said each prisoner could make a phone call to anyone before the execution. After the execution, family members were informed and invited to take the body for a funeral.

122. The Human Rights Committee ruled that family members of a person who was executed were themselves victims of a violation of article 7 of the International Covenant on Civil and Political Rights. In a case involving Belarus, after the application for pardon was rejected, four days passed during which the authorities refused to reveal any details about the situation or whereabouts of the convicted person. After the execution, the authorities failed to release the body for burial by the family or to indicate the location of the burial site. The Committee said that it understood "the continued anguish and mental stress caused to the authors, as the mother and sister of the condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his grave. The complete secrecy surrounding the date of the execution and the place of burial, as well as the refusal to hand over the body for burial in accordance with the religious beliefs and practices of the executed prisoner's family have the effect of

[274] A/HRC/25/33, paras. 30 and 31.

intimidating or punishing the family by intentionally leaving it in a state of uncertainty and mental distress."[275]

123. A similar practice of secrecy prevailed in Uzbekistan prior to abolition of the death penalty in the country in 2008. In its concluding observations, the Human Rights Committee said that the State party should take the necessary steps to inform the families of those who were executed before the abolition of capital punishment of the date of execution and the burial place of their relatives.[276]

4. Method of execution

124. The method of execution varies greatly among States that continue to impose the death penalty. In his report to the General Assembly, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that there is no categorical evidence that any method of execution in use today complies with the prohibition of torture and cruel, inhuman or degrading treatment. After a thorough review of existing methods of execution, the Special Rapporteur concluded that even if the required safeguards are in place, all methods of execution currently used can inflict inordinate pain and suffering. States cannot guarantee that there is a pain-free method of execution.[277] The use of previously untested drugs in executions raises concerns about the pain and suffering inflicted on the person concerned, which potentially may amount to torture or cruel, inhuman or degrading punishment. In its reply to the questionnaire, Belgium said that in order to ensure that Europe does not directly or indirectly contribute to the execution of the death penalty anywhere in the world, it had co-signed a letter urging the European Union Commissioner for Trade, Karel De Gucht, to extend the scope of Council Regulation (EC) No. 1236/2005 to include sodium thiopental as an item for which a licence is required. The 2013 European guidelines explain that trade policy powers are employed in order to prohibit trade in goods that have no practical use other than for the purpose of capital punishment. Responding to developments as regards capital punishment, the list of controlled goods was amended in December 2011. As a result, according to the Guidelines, export controls are now applied to short and intermediate acting barbiturate anaesthetic agents, which could be used for the execution of human beings by means of lethal injection. Furthermore, the Regulation is being reviewed to assess whether additional measures might be necessary to ensure that European Union economic operators refrain from trade that either promotes or otherwise facilitates capital punishment in foreign countries.

125. In a petition to the Inter-American Commission on Human Rights, a person sentenced to death in Texas argued that there was a lack of state and federal regulation concerning lethal injection procedures. He claimed that lethal injections were conducted without any meaningful oversight by the relevant regulatory authorities and were administered by individuals with no training in anaesthesia. The Inter-American Commission on Human Rights noted that execution procedures including the type of drug used and the applicable protocols were not public. It held that in order to be able to mount a proper challenge to the method of execution, a person threatened with the death penalty must have access to information related to

[275] *Kovaleva et al. v. Belarus* (CCPR/C/106/D/2120/2011, para. 11.10).
[276] A/65/40, p. 62.
[277] A/67/279, para. 41.

the precise procedures to be followed, the drugs and doses to be used in case of executions by lethal injection, and the composition of the execution team as well as the training of its members.[278] The Commission said that "the State has the duty to inform the person sentenced to death, in a timely manner, about the drug and method of execution that will be used, so he or she is not precluded from litigating the right to be executed in a manner devoid of cruel and unusual suffering".[279]

126. The use of stoning or lapidation as a method of execution was again a focus of concern during the reporting period. Under the existing Islamic Penal Code of the Islamic Republic of Iran, adultery while married is punishable by stoning. The Islamic Republic of Iran has maintained that the punishment of stoning for married persons who commit adultery serves as deterrence in order to maintain the strength of family and society. Iranian authorities have indicated that Parliament is currently reviewing the punishment of death by stoning.[280] The new Islamic Penal Code, passed by the Iranian Parliament in January 2012, omits any mention of stoning or details of the method of implementation.[281] In the course of the universal periodic review, Somalia accepted a recommendation that it eradicate the practice of death by stoning. It said it was not applied in Government-held areas but that there were reports of the practice in areas held by the Al-Shabaab organization. It said that "as the Government extends its authority in those areas, it is committed to eradicating the practice of death by stoning while working towards declaring a moratorium on the death penalty. The perpetrators of such crimes will be held accountable for their actions."[282]

5. Public execution

127. The safeguards do not specifically address the issue of execution carried out in public. The 2013 European Union guidelines state that the death penalty may not be carried out in public or in any other manner intended to further degrade the person facing execution. No country that responded to the questionnaire allows executions to be carried out in public.

128. During the period under review, public executions were reportedly carried out in the Democratic People's Republic of Korea, Iran (Islamic Republic of), Kuwait, Saudi Arabia and Somalia. The Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea noted that executions are conducted before all inmates "to provide a warning for the rest of the inmates", and even family members of the victims and children of all ages are required to be present.[283] A circular banning public executions in the Islamic Republic of Iran, issued in January 2008 by the former head of the judiciary, Ayatollah Shahroudi, does not

[278] Inter-American Commission on Human Rights, Report No. 53/13, Case 12.864 (*Teleguz, United States*), para. 123.

[279] Inter-American Commission on Human Rights, Report No. 44/14, Case 12.873 (*Arias, United States*), para. 190.

[280] A/HRC/16/75, paras. 22 and 23.

[281] A/HRC/19/82, para. 8.

[282] "The consideration by the Government of Somalia of the 155 recommendations", communication from the Permanent Mission of Somalia to the United Nations Office at Geneva, dated 21 September 2011, sect. 98.69.

[283] Report of the detailed findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (A/HRC/25/CRP.1), para. 759.

appear to have been effective because reports of public executions in the country continue.[284] In January 2013, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that "executions in public add to the already cruel, inhuman and degrading nature of the death penalty and can only have a dehumanizing effect on the victim and a brutalizing effect on those who witness the execution".[285]

VII. Conclusions and recommendations

129. This report confirms that the progressive reduction and abolition of capital punishment that has been charted in earlier reports has been sustained without change or interruption. Not only does the number of States that still practise the death penalty continue to shrink, in most countries where capital punishment is still practised various reforms in law and practice mean that the absolute numbers are also declining. When preparation of the quinquennial reports was first mandated by the General Assembly in the early 1970s, the international legal standards focused on limiting the use of capital punishment. Over the past 25 years, a growing number of States have accepted international obligations with respect to abolition of the death penalty. Even some States that have not abolished the death penalty within their own legal order are now bound as a matter of international law not to impose capital punishment because of the ratification of one of the relevant treaties.

130. The Economic and Social Council may wish to recommend that:

(a) States that continue to apply the death penalty should report on the number of persons sentenced to death or executed and the crimes for which it is applied, taking into account that transparency is a requirement of fair and effective criminal justice;

(b) Abolitionist States should ensure that they have an adequate legislative framework on extradition and deportation to specifically prohibit the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognized standards, unless adequate assurances are obtained that the death penalty will not be carried out;

(c) States should ensure that prisoners on death row benefit from all the guarantees provided in the Standard Minimum Rules for the Treatment of Prisoners, and are not subjected to discrimination due to their status as prisoners on death row;

(d) Retentionist States should ensure adequate access to clemency or pardon procedures;

[284] A/HRC/16/75, para. 17.

[285] Office of the High Commissioner for Human Rights, "UN Special Rapporteurs condemn ongoing executions in Iran", press release, 28 June 2012.

(e) States where death sentences are commuted to life imprisonment should apply relevant standards, for example to ensure that foreign prisoners are provided with the possibility of serving their sentences in their country of nationality;[286]

(f) Retentionist States in the process of reforming their laws to reduce the number of offences punishable by the death penalty should limit the application of the death penalty to the most serious crimes, and ensure that the death penalty is discretionary, to allow consideration of the specific circumstances of the offender and the offence;

(g) In any criminal justice reform that involves the death penalty, States should be guided by the full scope of standards and norms relating to the criminal justice system, including those relating to the treatment of prisoners, the treatment of children in the criminal justice system, special measures for female offenders, due process guarantees and the right to legal assistance, which provide detailed guidance to Member States on how to comply with their obligations under the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant conventions.

[286] See Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I).

Annex

Supplementary data and tables

Table 1
Status of capital punishment in December 2013: retentionist countries and territories (39)

Country or territory	*Date of last execution*
Afghanistan	2013
Bahrain	2010
Bangladesh	2013
Belarus	2012
Botswana	2013
China	2013
Democratic People's Republic of Korea	2013
Egypt	2011
Equatorial Guinea	2012
Ethiopia	2007
Gambia	2011
India	2013
Indonesia	2013
Iran (Islamic Republic of)	2013
Iraq	2013
Japan	2013
Jordan	2007
Kuwait	2013
Lebanon	2004
Libya	2012
Malaysia	2013
Nigeria	2013
Pakistan	2012
Saint Kitts and Nevis	2008
Saudi Arabia	2013
Singapore	2010
Somalia	2013
South Sudan	2013
State of Palestine	2013
Sudan	2013
Syrian Arab Republic	2011
Taiwan Province of China	2013
Thailand	2009
Uganda	2006
United Arab Emirates	2012
United States of America	2013
Viet Nam	2013
Yemen	2013
Zimbabwe	2005

Table 2
Status of capital punishment in December 2013: fully abolitionist States and territories (101)

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*	*Maximum term of imprisonment*[a]	*Minimum term to be served before release*[b]
Albania	2007	2000		Life	25 years
Andorra	1990		1943	25 years	Five sixths[c] of the penalty
Angola	1992		..	30 years	Five sixths of the penalty
Argentina	2008	1984	1916	Life	35 years
Armenia	2003		1991	Life	20 years
Australia	1985	1984	1967	-[d]	-
Austria	1968	1950	1950	Life	15 years
Azerbaijan	1998		1993	Life	25 years
Belgium	1996		1950	Life	15/19/23 years[e]
Bhutan	2004		1974	Life	-
Bolivia (Plurinational State of)	1997	1991	1974	30 years	Two thirds of the penalty
Bosnia and Herzegovina	2001	1997	..	45 years	Three fifths of the penalty
Bulgaria	1998		1989	Life	No conditional release
Burundi	2009		1997	Life	No conditional release
Cabo Verde	1981			25 years	Five sixths of the penalty
Cambodia	1989		..	Life	15 years
Canada	1998	1976	1962	Life	10/25 years[e]
Colombia	1910		1909	50/60[f] years	Three fifths of the penalty
Cook Islands	2007		..	Life	5/10 years[e]
Costa Rica	1882		..	50 years	Half of the penalty
Côte d'Ivoire	2000		1960	20 years	Half of the penalty
Croatia	1990		1987	40 years	Half of the penalty
Cyprus	2002	1983	1962	Life	12 years
Czech Republic	1990		..	Life	20 years
Denmark	1994	1933	1950	Life	12 years
Djibouti	1995		1977[g]	Life	-
Dominican Republic	1966		..	30 years	Half of the penalty
Ecuador	1906		..	40 years	No minimum term
Estonia	1998		1991	Life	30 years
Finland	1972	1949	1944	Life	No minimum term[h]
France	1981		1977	Life[i]	18/22[j] years
Gabon	2010		1989	Life	30 years
Georgia	1997		1994	Life	25 years
Germany	1949[k]		..	Life	15 years
Greece	2004	1993	1972	Life	20 years
Guinea-Bissau	1993		1986	Life	-

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*	*Maximum term of imprisonment*[a]	*Minimum term to be served before release*[b]
Haiti	1987		1972	Forced labour for life	-
Holy See	1969		..	35 years	Two thirds of the penalty
Honduras	1956		1940	40 years	Three quarters of the penalty
Hungary	1990		1988	Life	20/30 years[a,j]
Iceland	1928		1830	Life	-
Ireland	1990		1954	Life	40 years
Italy	1994	1947	1947	Life	26 years
Kiribati	1979		1979[g]	Life	-
Kyrgyzstan	2007		1998	Life	30 years[b]
Latvia	2011	1999	1996	Life	25 years
Liberia[m]	2005		2000	-	-
Liechtenstein	1989		1785	Life	15 years
Lithuania	1998		1995	Life	20[b]/25 years
Luxembourg	1979		1945	Life	15 years
Malta	2000		1943	Life	Minimum term determined by courts
Marshall Islands	1986		1986[g]	Life	-
Mauritius	1995		1987	Life	-
Mexico	2005		1961	140 years	No conditional release
Micronesia (Federated States of)	1986		1986[g]	Life	10 years
Monaco	1962		1847	Life	No conditional release
Montenegro	2002		2006[g]	40 years	Half of the penalty
Mozambique	1990		1986	28 years	No conditional release
Namibia	1990		1988	Life	Minimum term determined by courts
Nauru[n]	1922			Life	10 years
Nepal	1997	1990	1979		
Netherlands	1983	1870	1952	Life	No minimum term[b]
New Zealand	1989	1961	1957	Life	10 years
Nicaragua	1979		1930	30 years	Two thirds of the penalty
Niue					
Norway	1979	1905	1948	21 years	Two thirds of the penalty
Palau	1994		1994[g]	Life	No conditional release
Panama	1917		1903[g]	30 years[o]	Two thirds of the penalty
Paraguay	1992		1928	25 years[i]	Two thirds of the penalty
Philippines	2006		2000	Life	No conditional release
Poland	1998		1988	Life	25 years
Portugal	1976	1867	1849	25 years	Five sixths of the penalty
Republic of Moldova	1995		1989	Life	30 years
Romania	1990		1989	Life	20 years
Russian Federation	2010		1996	Life	25 years

Country or territory	*Date of abolition for all crimes*	*Date of abolition for ordinary crimes*	*Date of last execution*	*Maximum term of imprisonment*[a]	*Minimum term to be served before release*[b]
Rwanda	2007		1998	Life	20 years
Samoa	2004		1962[g]	Life	10 years
San Marino	1865	1848	1468	40 years	25 years
Sao Tome and Principe	1990		1975[g]	25 years	Half of the penalty
Senegal	2004		1967	Forced labour for life	-
Serbia	2002		1980	40 years	Two thirds of the penalty
Seychelles	1993		1976	Life	-
Slovakia	1990		..	Life	25 years
Slovenia	1989		1957	30 years	Three quarters of the penalty
Solomon Islands	1978	1966	1966[g]	Life	-
South Africa	1995	1995	1991	Life	25 years
Spain	1995	1978	1975	20 years[p]	Three quarters of the penalty
Sweden	1973	1921	1910	Life	18 years
Switzerland	1992	1942	1944	Life	15 years
The former Yugoslav Republic of Macedonia	1991		..	Life	15 years
Timor-Leste	1999		1999[g]	30 years	Half of the penalty
Togo	2009		1979	Life	No conditional release
Turkey	2004	2002	1984	Life[q]	30 years
Turkmenistan	1999		1997	25 years	Three quarters of the penalty
Tuvalu	1976		1976[g]	Life	-
Ukraine	1999		1997	Life	25 years[g]
United Kingdom of Great Britain and Northern Ireland	1998	1965[r]	1964	Life	Minimum term determined by courts
Uruguay	1907		..	30 years	Two thirds of the penalty
Uzbekistan	2008		2005	Life	-
Vanuatu	1980		1980[g]	Life	8 years
Venezuela (Bolivarian Republic of)	1863		..	30 years	Three quarters of the penalty

Notes: Two dots (..) indicate that the information is not available.

A hyphen (-) indicates that the item is not applicable.

[a] The maximum length of imprisonment for crimes previously sanctioned by capital punishment; where this information is not available, the maximum length of imprisonment for the most serious offences is provided.

[b] The minimum part of the penalty that must be served before conditional release, where applicable; this information is based on replies to the past three surveys, or — where replies were not available — on the laws of Member States that have been made available to the United Nations Office on Drugs and Crime.

[c] A maximum of 2.5 days per month of imprisonment may be deducted for good behaviour.

[d] The death penalty was abolished for different crimes at the commonwealth, territory and state levels, and different maximum (and minimum) terms may exist in these jurisdictions.

[e] Depending on the type or seriousness of the offence or on the length of the sentence.

[f] In cases of concurrence of offences.

[g] Year in which independence was achieved. No executions have taken place since that time. The date of the last execution prior to independence is not available.

[h] By way of pardon only.

[i] An additional period of detention may be applied as a security measure.

[j] In cases of recidivism.

[k] Capital punishment was abolished in the German Democratic Republic in 1987.

[l] The courts may preclude eligibility for parole or establish the earliest date of eligibility for parole.

[m] After abolishing capital punishment in 2005, Liberia enacted legislation reinstating it. Courts have imposed death sentences but none have been carried out and they have not even been confirmed by the Supreme Court. Liberia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and therefore, pursuant to article 1 of the Protocol, it cannot execute a person. For these reasons, Liberia remains in the fully abolitionist category although it might have been classified as de facto abolitionist given that no death sentence has been carried out since 2000.

[n] In previous reports, Nauru was classified as de facto abolitionist. It has been reclassified as fully abolitionist in the light of the information provided in the national report of Nauru submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (A/HRC/WG.6/10/NRU/1 and Corr.1, para. 19).

[o] The sentence can be increased by up to one third of the applicable sentence in cases of aggravated homicide.

[p] The sentence can be increased to up to 40 years in exceptional cases.

[q] "Heavy life imprisonment", which entails additional security measures.

[r] Capital punishment for ordinary crimes was abolished in Northern Ireland in 1973.

Table 3
Status of capital punishment in December 2013: abolitionist countries and territories for ordinary crimes only (7)

Country or territory	*Date of abolition for ordinary crimes*	*Date of last execution*
Brazil	1979	1855
Chile	2001	1985
El Salvador	1983	1971
Fiji	1979	1964
Israel	1954	1962
Kazakhstan	2007	2003
Peru	1979	1979

Table 4
Status of capital punishment in December 2013: de facto abolitionist countries and territories (51)

Country or territory	*Date of last execution*
Algeria	1993
Antigua and Barbuda	1989
Bahamas	2000
Barbados	1984
Belize	1986
Benin	1987
Brunei Darussalam	1957
Burkina Faso	1989
Cameroon	1997
Central African Republic	1981
Chad	2003
Comoros	1999
Congo	1982
Cuba	2003
Democratic Republic of the Congo	2003
Dominica	1986
Eritrea	1989
Ghana	1993
Grenada	1978
Guatemala	2000
Guinea	2001
Guyana	1997
Jamaica	1988
Kenya	1987
Lao People's Democratic Republic	1989
Lesotho	1995
Madagascar	1958
Malawi	1992
Maldives	1952
Mali	1980
Mauritania	1989
Mongolia	2008
Morocco	1993
Myanmar	1988
Niger	1975
Oman	2001
Papua New Guinea	1950
Qatar	2003
Republic of Korea	1997
Saint Lucia	1995
Saint Vincent and the Grenadines	1995
Sierra Leone	1998

Country or territory	*Date of last execution*
Sri Lanka	1976
Suriname	1982
Swaziland	1989
Tajikistan	2003
Tonga	1982
Trinidad and Tobago	1999
Tunisia	1991
United Republic of Tanzania	1994
Zambia	1997